THE IMPACT OF FEDERAL REGULATIONS ON CALIFORNIA'S CENTRAL VALLEY

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

APRIL 1, 1996

Printed for the use of the Committee on Government Reform and Oversight

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IMPACT OF FEDERAL REGULATIONS ON CALIFORNIA'S CENTRAL VALLEY

MONDAY, APRIL 1, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
Mondesto, CA.

The subcommittee met, pursuant to notice, at 1:41 p.m., in the Red Lion Hotel, 1150 Ninth Street, Modesto, CA, Hon. David McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh and Condit.

Staff present: Mildred Webber, staff director; Karen Barnes, professional staff member; David White, clerk; and Liza Mientus, minority professional staff member.

Mr. MCINTOSH. Welcome to today's hearing of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs. Thank you for coming today to discuss an extraordinarily important issue that many in Washington are only now beginning to waken to and realize we need to cut back on the tangled web of red tape that stifles small businesses, hurts job creation and consumers in this country.

It is great to be here in Modesto and I want to thank Gary Condit and thank his staff in the District for helping us put on this field hearing.

There is a bipartisan effort in this Congress to put some common sense back into our regulatory process. Gary is a real leader in Washington. Those of us who are in the freshman class on the Republican side have come over and talked to him to say "what do you think about this?" "How can we move forward in this area?" His work with us shows potential to put aside partisanship to have real changes to make life better for real Americans. So I want to thank you, Gary, for helping us come here today.

Mr. CONDIT. I am sorry, you are going to have to repeat all that again. [Laughter.]

Mr. MCINTOSH. They waited until I got all the flattering things through and then turned on the microphones.

This subcommittee is a new subcommittee in this Congress. The staff refers to us, because it has got a long name, as the committee to cut the crap. [Laughter.]

And we view as our effort to go through a lot of these regulations and find out where they do not make sense, where they are costing us jobs and where we can do a better job of regulating to protect

the environment, health and safety. We have got a long way to go, but we have already started to have an impact.

The statistics have come out about last year, 1995, our first year in business, and we had 10 percent fewer new regulations in Washington because of that pressure and that oversight. But as I say, that is only a beginning and we do have a long way to go in order to cut back on unnecessary regulations.

One of the things that we need to do is make sure that Washington starts getting off of our backs and back on our sides. And in order to do that, I think we need to start listening to Americans about problems in our regulatory systems. And that is one of the reasons why I was delighted to have this field hearing. It is the 14th that we have had so far for this subcommittee. We have been able to learn about new problems and more about how these problems affect real people by getting outside of Washington and taking testimony from citizens, which then we take back with us and make part of the official record of this subcommittee.

And I wanted to share with you one of the things we heard because I think it is telling about some of the problems that we have seen in our regulatory process. We heard testimony from a farmer from Indiana, my home State, her name is Kay Whitehead and she owns a family farm that produces pork products. Kay pointed out that she has to comply with 75 different handbooks of regulation just on their grain-producing side of their business and that there were over 1,000 regulatory changes last year that she had to keep up with. And she said even that is manageable but so often she finds that there are conflicting and burdensome regulations that she just cannot possibly comply with.

And she gave us one example where the Soil and Conservation Service, the Indiana Division of the Department of Agriculture Soil and Conservation Service, had come in and told her that when she disposed of the manure from her pork producing process, that she could not till it into the soil, because they were worried that there would be additional runoff and the soil would run into the streams. So she thought that is OK, we can spread it on top and let it fertilize the ground that way, but then the local EPA agency, IDEM as it is called in Indiana, came by and said, no, no, Kay, you have to till it into your soil because we are worried about the manure running off and causing a pollution problem in our streams.

Now, Kay said that she actually did not care which way they came out on that regulation, but she knew that no matter what she did, she would be violating one agency's rule. She did point out in our hearing that her neighbors had a strong preference for her plowing it into the soil. [Laughter.]

But this subcommittee will take back the testimony we hear today and make it part of our official records. It will become part of our oversight of the agencies and we will be bringing up different agency heads and asking them about these regulations, asking them why they are doing it and what their plans are to make more common sense in their programs.

Last week, we made a historic step forward, a small step, but historic one, in the regulatory relief process. As part of the bill to extend the debt limit, we passed the first regulatory relief legislation since 1980. And it did two things—one, it required an addi-

tional review so that small businesses would not be penalized by regulations and gave small businesses the right to go to court if the agencies ignored that law, which they have been doing for the last 14 years. The second was to require that these regulations now come back to Congress and that we will have to start voting on these rules and regulations, and you cannot have Members of Congress and Senators come back to you and say oh, well, we did not pass that, some agency put that regulation in effect. We are now going to have to be responsible for those.

Now it is not everything, and there is a lot we still have to do on the agenda. I am going to continue to work with Gary to make sure that we pass a regulatory relief bill that uses market-based approaches, cost/benefit analysis and good science when we write regulations. We are going to work for legislation to protect private property rights.

Gary has taken the lead, along with some other Members on legislation that will protect us from the Endangered Species Act and put some common sense into that proposal.

And then we have got a bill that our committee had worked on to say let us sunset some of these old regulations. After 7 years we can take a look at them, if they do not make sense or the technology has changed or they are not working the way they should, we will let the regulation expire and have the agency come up with a new program—common sense approach. So much of a good idea that by the time it made it to the House floor, they had taken the sunset out of our sunset bill and said we will look at these regulations after 7 years, but we want to keep them all on the books. And we decided that does not cut the mustard and let us take that back next time with the full bill, so that we can get some real changes.

Well, 1994 was a crossroads in this country where the people sent a mandate to change the way Washington does business, to start getting Government off of our backs and back on our sides. We have been listening to that mandate and this new Subcommittee on Regulatory Affairs has been working very hard to implement that.

I appreciate you coming today to give us your input and Gary and I both want to reassure you that we will not give up on this effort, we will continue to push, change will come, and we will continue to work on these bills this year and next year when we get another mandate from the people, and once again, I think we will get to a situation where Americans will not laugh when somebody says, "I am here from the government and I am here to help you."

So that is our mission and what we are here to do today. Let me now turn to Gary and see if you have any opening remarks and we will then start hearing from our witnesses.

Mr. CONDIT. First of all, David, let me thank the subcommittee for coming to Modesto today and I would like to thank you, David McIntosh, for bringing the subcommittee to the Central Valley.

For those of you in the audience, Congressman McIntosh, who hails from Indiana, is one of the leaders in the Congress of regulatory reform and he has demonstrated from day one when he arrived there his interest in regulatory reform, and has fought the good battle. We have not always been successful but we continue to fight it and we will be back at it when we get back after this

break and hopefully if it takes us into next year, we will do that as well.

The fact that Modesto was selected as the site of the hearing demonstrates the subcommittee's understanding of the tremendous impact of the Federal regulatory system upon the Central Valley.

Today, we will be hearing firsthand from those most heavily impacted by the Federal regulatory process. We will hear how regulations, though perhaps well-intended at their inception, have been implemented in a fashion that defies logic and to some extent common sense.

We will hear how farmers wishing to avoid devastation of future floods have been held up by bureaucrats from Sacramento to Washington, DC. We will hear how Fish and Wildlife Service has twisted the definition of harming endangered species to include development in an area that is outside kit fox habitat because the development may lead to future development, which may in turn have an impact on the kit fox habitat.

We will hear how agricultural food processors, seeking to expand their operation have been penalized by air districts for poor air quality caused by smoke, smog blown over from the Bay Area, despite the fact that equipment used in these expansions is state-of-the-art and highly efficient.

The hearing will confirm what this subcommittee has been hearing throughout the Nation: This Congress needs to eliminate overburdensome and counterproductive regulation; reduce the size of government; make government more responsive and efficient; and, bring common sense into the regulatory system.

The House has heard the message loud and clear. Major reforms have passed the House with bipartisan support, as my colleague has mentioned—risk assessment, cost/benefit analysis, regulatory sunset and placing a moratorium on new Federal regulations.

We still have a long way to go, particularly in the Senate where these proposals are stalled. We need to keep the pressure on the Congress to continue to move forward on all these measures.

I look forward to this hearing, to hear from the witnesses, many of them that I know very well and I know their cases very well because we have tried in many ways to be of assistance and helpful to them.

Once again, I would like to thank you, David, for being here. I would like to thank the staff that you brought for being here and we are delighted that you are in Modesto, and we look forward to the outcome of this hearing once we get back and put all the information together.

As you can see on each end of the table, the apricot lady has been here. She is a little bit like the Easter bunny, she brings chocolate covered apricots and other commodities that come from the Central Valley, so we will keep our energy level up.

But thank you very much for being here, I appreciate it.

[The prepared statement of Hon. Gary Condit follows:]

GARY A. CONDIT
18TH DISTRICT, CALIFORNIA

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HOUSE GOVERNMENT REFORM AND OVERSIGHT
SUBCOMMITTEE ON
NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES
AND REGULATORY AFFAIRS

IMPACT OF FEDERAL REGULATIONS ON
CALIFORNIA'S CENTRAL VALLEY

APRIL 1, 1996

MODESTO, CALIFORNIA

OPENING STATEMENT BY
REPRESENTATIVE GARY A. CONDIT
18TH CONGRESSIONAL DISTRICT, CALIFORNIA

Mr. Chairman,

I would like to welcome the House Government Reform and Oversight Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs to the Central Valley of California. I would also like to take this opportunity to thank the Chairman of the Subcommittee, Mr. David McIntosh, for bringing the subcommittee to the 18th District of California.

That fact that Modesto was selected as the site of this hearing demonstrates the Subcommittee's understanding of the tremendous impact that the federal regulatory system has upon the people of California's Central Valley. The impact of federal regulations is particularly acute in the Central Valley, where a boom in

growth has placed additional pressure upon our already limited natural resources, particularly water and prime agricultural land.

Today we will be hearing first-hand from those in the Central Valley who are acutely impacted by the federal regulatory process. We will hear how regulations, though perhaps well intended at their inception, have been implemented in a fashion that defies logic and common sense.

We will hear how local farmers who got flooded out in 1995, wishing to clear debris and sediment from creek beds in order to avoid the devastation of future floods, have been held up by federal regulators from Sacramento to Washington, D.C.

We will hear how the U.S. Fish and Wildlife Service has twisted the definition of "harming endangered species" to include an approved development of factory outlets in an area that is outside the endangered San Joaquin kit fox habitat. The Service's twisted reasoning is that the development may lead to future development, and the cumulative affect of this unknown and unplanned development may have an impact upon the kit fox's habitat!

We will hear how agricultural food processors, seeking to expand their operations in order to compete in the worldwide export market, have been penalized by air districts for poor air quality

caused by smog blown over from the Bay Area, despite the fact that equipment used in these expansions is state of the art and highly efficient.

I believe that this hearing will confirm what this subcommittee has been hearing throughout the nation:

- We need to eliminate overburdensome and counterproductive regulations;

- We need to reduce the size of government;

- We need to make government more responsive and efficient;

- We need to bring common sense into the regulatory system.

Fortunately, the House of Representatives has heard this message loud and clear. Major reforms-- risk assessment/cost benefit analysis, the Regulatory Sunset Act and placing a moratorium on new federal regulations-- have passed the House of Representatives with bi-partisan support.

Unfortunately, these proposals still have a long way to go, particularly in the Senate where most of them are stalled. It is my hope that today's hearing will help to keep the pressure on

the Congress to continue to move forward on these measures.

I look forward to hearing from the witnesses of real world examples of the need to bring common sense into our federal regulatory system.

Again, I would like to thank the Chairman for his commitment to these issues, and especially for coming to Modesto to hear directly from those impacted by federal regulations.

Thank you.

Mr. MCINTOSH. Thank you, Gary. Thank you for providing the apricots, that is great.

Let us now call forward the first panel of witnesses: Mr. Shel Thompson, Mr. Ron West, and Mr. Robert Rucker. If you would please come forward.

For the benefit of the audience and the witnesses, let me tell you how we are going to be having this session today. We have got four panels of witnesses, we are asking each of them to confine their remarks today to about 5 minutes. They have generally prepared very thorough written testimony and what I would ask you gentlemen to do is summarize that for me. And to the extent you feel comfortable doing it, try not to read from the testimony but just express in your own words what it is. The written testimony will be put into the record as the official testimony for you.

David White, who is with our subcommittee, will be flashing up a reminder to you and to me as we get closer to the 5-minute mark. He is the enforcer on the clock for us.

One of the reasons that we unfortunately have to do that is that we have a lot of people who have asked to talk during what we call the open microphone period, where anyone in the audience can come and testify, and that will be after we have gone through the fourth panel. I am sorry to make folks wait, but I do want to give people an opportunity at that time to be heard. And I will stay for as much of that as I can, I may have to catch a flight at the end of the day to move to another hearing up in Seattle, but I think we should have enough time to handle all that today.

Mr. CONDIT. And I will stay.

Mr. MCINTOSH. Great.

Let me ask each of you to please rise. The committee chairman, Mr. Clinger, has asked that we swear in all of our witnesses, so there does not appear to be any favoritism when we swear in folks back in Washington.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you very much. Let the record show that each of the witnesses answered in the affirmative.

Our first witness today is Mr. Shel Thompson, president of Charter Mortgage. Shel, you have got a very compelling example of the horrible costs of regulation. Why do I not let you just lead off and tell us about what happened to you.

STATEMENTS OF SHEL THOMPSON, PRESIDENT, CHARTER MORTGAGE; RON WEST, RON WEST CONSULTING; AND ROBERT RUCKER, PRESIDENT, RUCKER CONSTRUCTION

Mr. THOMPSON. I have been involved in real estate and real estate lending since 1970. I am also an environmentalist. I was president of GOAL, which is a local environmental group, I was president back in 1978. My particular points of interest were land use and aesthetics.

Since that time, over the years, and not just because my ox has been gored during the last couple of years, I have become increasingly disillusioned with the ways that the environmental laws and the EPA is being used, not for the stated purpose of protection of clean air and clean water, but strictly to legislate their own agendas and keep their own bureaucracy in action.

There is a subdivision called Mesa de Oro in Sutter Creek, CA. My company was the lender on the subdivision and subsequently, due to a variety of things, we got it back and I was forced to deal with the subdivision.

The subdivision was built on mine tailings from the Central Eureka Mine. The Mother Lode is an area 125 miles long and 1 mile wide, which is called the arsenic belt because wherever you find arsenic, you also find gold. All of that area is arsenic.

Our subdivision was tested by the county, it passed the EIR and all the other regulatory things. It had elevated levels of arsenic and the county suggested that we put a foot of topsoil over all the exposed parts in the subdivision and they said go ahead and build, which we did.

After we had built about 15 houses, the State EPA walked in and said no, this is no good, arsenic is a known carcinogenic and you are out of business. We are broke, we are absolutely broke. We have been stopped for 2 years unnecessarily over an issue that they freely admit they will never be able to prove whether arsenic or mine tailings is harmful to people or not.

The first meeting that I attended with the State EPA, I said OK, let us assume that the soil is bad. The county already said it is bad, everyone in the Mother Lode knows it is bad, that does not mean anyone is going to eat it, but let us just assume it is very, very bad. Let us solve the problem, let us find out if it is actually detrimental to people. Let us do tests on people, let us do hair, urine, skin tests. They said no, you cannot do that because you cannot force people to comply. I said well, let us do it with volunteers. No, we do not want to do that. Let us do plant tests, let us test the vegetation. No, you cannot do that because at certain times of the year, plants pull more than at other times of the year. I said well this is spring time, you will get your worst reading possible. No, we are not going to do that. Let us go back and test in the coroner's office, let us look at the record for the last 150 years since these mine tailings have been in. Let us find out if there have been elevated levels of cancer. No, you cannot do that unless there is at least 100,000 people. Everything they rejected, including covering it up with cement. They wanted to test.

Now during the last 2 years, they have tested and tested. They have never addressed the issue of whether or not it is harmful. All they have looked for is is there elevated levels of arsenic. We already knew that.

To make a long, long story short, I think what needs to be—oh, finally, and incidentally, my lawyer told me all the way along what would happen. He was right in every case. He told me that when the EPA runs out of money, they are going to do this; when they do this, they are going to do that. Finally, they found a deep pocket in Allied Signal, which is a $7 billion corporation. They rejoiced at that point. This project has cost millions to date, somewhere between $3 million and $6 million. They have never admitted along the way how much they were spending.

Finally, their way to solve the whole problem was to put 2 feet of topsoil instead of 1 foot. I said well, OK, that is all right, but how come you do not put 2 feet of topsoil on the houses where people are living in our subdivision. Answer was they do not want it.

The bottom line is if 2 feet is the magic number and 1 foot, as we were told to do, is not, then why are the people who live there 24 hours a day not subjected to something dangerous.

The whole thing has been a farce. They knew where they wanted to go at the beginning, they wanted to spend massive amounts of money. They are arrogant, they have put everyone up there out of business and they have caused panic among the people. There are lawsuits all over the place that solve nothing, it has done nothing and I wish I had a lot more time to get into this more thoroughly.

Mr. MCINTOSH. Actually, we will be able to come back to you in the questioning period because there are several things I would like to talk with you about then.

Thank you very much for coming forward and putting that into the record.

Mr. West.

Mr. WEST. Do you want me next or do you want Bob?

Mr. MCINTOSH. Go ahead, Ron.

[The prepared statement of Mr. Thompson follows:]

March 28, 1996

TO: CONGRESSMAN GARY CONDIT
and Staff

Gentlemen:

This letter shall outline the history and the handling of events by the EPA at the Mesa de Oro subdivision, Sutter Creek, California.

Obviously, the facts and reasoning in this document are from my personal perspective and are therefore open to scrutiny by the opposing side which I welcome. I inttend herein to be as concise and factual as possible. Unlike almost anyone else involved, I have been subjected to these events from the beginning and I, alone to date, have been totally vanquished economically and effectively by an outrageous process that serves no one in a positive manner.

My company, Charter Mortgage, financed the improvements at the subdivision via private investor deeds of trust. The project was approved by all state and local entitities according to the usual procedures which included Environmental Impact Review. When passed, the developers took reservations from prospective buyers and quickly had all 43 lots reserved. These lots were to sell for approximately $45,000 each.

At that point, a neighbor who had objected to the project from the beginning asked the county to test for arsenic which was not by law included in the E.I.R. at that time. She had apparently read a news article which correctly stated that arsenic is common throughout the Mother Lode, a 120 mile band, running from Grass Valley, south to Mariposa. The band is typically over a mile wide and is host to large deposits of gold and arsenic which are geologically compatible. In fact, thousands of test holes were dug thoughout the Mother Lode seeking high concentrations of arsenic because there, is also found gold. For this reason, the nick name for the Mother Lode has always been the "Arsenic Belt." Everyone living there resides on elevated levels of arsenic

and logic would suggest that their health, mortality rates, and body tissue readings would differ drastically from people not living around arsenic, if in fact there was a problem.

The county complied with the request from the neighbor to test for arsenic despite the fact that it was not a legal requirement at the time, and despite the fact that the subdivison had already been approved and lots spoken for.

Tests showed elevated levels of arsenic. Various governing agencies tested and pondered for nine months and ultimately decided that the arsenic had always been there. It was almost certainly arsenic which is not bio available, and there was no reasonable cause to deviate from the original project except to have the developer cover all exposed areas (the yards not covered by cement or structure) with one foot of top soil. In addition, there was a disclosure added to the title report which must be signed and read by purchasers stating that the site had arsenic and other heavy metals and that the test results were on file with the County.

During this nine month period, from early 1990 to 1991, a severe real estate recession began. Due to the recession, retired people for whom the project was designated, virtually stopped migrating as the values of their homes in metropolitan areas plummeted. Others died, bought alternative housing or lost interest during the nine month investigation. Only four of the 43 lots closed escrow, eventually forcing the developers into insolvency. They deeded the project to Charter Mortgage subject to the investors deeds of trust.

Because the property was deeded in bulk (more than four lots to a single entity) the Department of Real Estate insisted on an amended public report, a lengthy and expensive process. Thirteen months later, the project was identically approved except for a reduction in homeowner fees for each lot in the sum of less than $20 per month. The thirteen month period cost Charter Mortage, of which I am the sole owner, more than $125,000 in interest payments, taxes and professional fees.

Finally, the project was ready to go in November 1993. By this time, the recession was worse and no bank would loan regardless of collateral on a "speculative project." I personally arranged for funds to build ten houses which cost more than $700,000. Private investors took equity positions, trades were made, and I borrowed against real estate and note assets. I also sold my house to finance construction. We built inexpensive houses selling in the $100,000 - $115,000 range which was considerably below Sutter Creek comparables. The program worked in that 17 sales were generated from the ten houses actually built. At the rate of construction and sale, the project would have been completed by September 1994, thereby returning investors their capital, making my company whole again, generating county and city revenue and providing a total of 43 new homes.

In April, we were visted by Cal Osha and California EPA. They forced a shutdown based on the same tests that the County had done approving the project. At that

point, the circus began.

The first two meetings I attended were closed door sessions at the Sacramento Office of the California EPA. A preview of the siege to come revealed as was the arrogance and structure of the EPA.

The EPA officials told me, among other things the unsettling news that:

1. "We bankrupt people."
2. "We have unlimited powers to test for whatever and wherever."
3. "We can't give any estimate as to cost.
4. You will pay.
5. So long as there is a chance that any public health issue is unresolved, we will be there.

I immediately suggested that we already knew by the County's test there was elevated levels of arsenic in the soil. The important thing to learn, if there was a question, would be if any effects on humans, plants, or animals were detrimental.

I suggested:

1. Do hair, urine and tissue test on all people who had ever come in contact with our project.

This was rejected because they said arsenic leaves the body in 48 hours plus no one can be required to be tested (not even the ones who originally lodged the complaint). Not disuaded by this obvious denial of the right to cross examine the accuser, I suggested we invite people to be tested voluntarily. Answer - no.

2. Do tests on plants, trees, etc. as well as plant test vegetable gardents on site and test for arsenic. The EPA rejected this approach because during certain seasons plants pull more from the soil than at other times. I said, "great were in Spring and the worst possible readings will be available." This was rejected.

3. Do tests on gophers, insects, and other animals living on the site. That was rejected because animals don't have the same digestive tract as humans. If that were true, no animal tests would ever be valid. No dice.

4. I suggested doing historical surveys at the coroners office to chart the incidence of area cancers and specific disease and mortality rates since 1849. This was rejected because they said population tests were only valid with concentrations of 100,000 people or more.

It was obvious that these people were more interested in creating questions than answers. So, I suggested a more radical approach. I said, "Let's assume that the dirt is 100% toxic. Instead of testing an endless proposition, why don't we cover it with cement and build a mobile home park?"

Mr. Wolfpenden of EPA thought a moment and said that while intesting , how could one know if arsenic could not seep through cement?

I pointed out that their approach admitted that no known problem existed, admitted that hard data could never be conclusive and that subsequent waves of law suits would result. The EPA group was apologetic but confident that the "circle of law" would eventually resolve all problems.

The EPA was correct in that the process did bankrupt me and the circle of law would get everyone involved. I have been named in approximately ten class action suits that include pratically everyone whoever drove by the property. I don't bother to answer any of these because subsequent to that, the United States EPA sent me a letter threatening to fine me $25,000 per day until I cleaned up the land. At those prices, I could soon start my own county.

For months, the State EPA tested, held meetings and stirred up the public. At each public meeting, I asked the same question which was, "In that you could not estimate a cost at the beginning, how much have you spent to date?"

They never could or would answer that although I had been told in the first meeting that their staff bills at $125 per hour regardless of the function. This means that public meetings with 8 EPA people cost $1000 per hour. Their coordinator billed at $20,000 per month. Presumably, they could have kept a running tally on their costs but either they did not know or would not divulge.

Throughout this period, EPA failed to address the key issue. Was this for available arsenic or not?

At the time, I had an attorney who told me that California EPA would test until they ran out of money. They would then say the project was so serious that the Federal EPA must be brought in. The Federal EPA would ultimately estimate a cleanup cost of $2 million which is coincidentally the sum they are authorized to spend without congressional approval.

Everything happened exactly as my lawyer predicted, with one exception. A deep pocket potentially responsible party (P.R.P.) was located to the jubulant celebration of the EPA staff.

Mesa de Oro is located on mine tailings deposited from the shaft of the Central Eureka Gold Mine. The last mining entity was Pacific Industries which stopped mining in the 1950's and sold the property in the 1960's. In the 1970's, the corporation was sold to Allied Signal, a $7 billion corporation. Although Allied bought Pacific Industries years after the Mesa de Oro site was sold, and although Allied certainly had nothing to do with the land in any way, nor had they ever heard of it, they were named a responsible party by Federal EPA Although the distribution of liability in the "in for a dollar, in for a mill," concept helps me personally, it is patently wrong.

During the test conducted by both State and Federal EPA, the unanswered question of whether health risks to the public actually existed was continually ignored. Congressman Doolittle demanded via letter dated, January 27, 1995 that the species of arsenic be determined. California EPA had repeatedly said these tests were for the purpose of speciation. Federal EPA finally conducted such tests which indicated arsenic pyrite deposits and then stated their agency does not distinguish between types of arsenic.

Independent chemists, such as Don DeVries and geologists such as George Wheeldon and Dr. Lee Scholls, have analyzed the data provided by both California and Federal EPA and have shown that the arsenic from this site is:

1. Not water soluable

2. Not bio available

3. Not migratory

EPA representatives have admitted in private meeting, public forums and publications, such as Time magazine (September 25, 1995, page 36) thay they do not now know, nor will they ever conclusively say that arsenic in mine tailings is a health hazard. However, they hold up the all inclusive allegory of thought provoking doubt that in matters of public heath no amount of caution is unreasonable.

People are people and agencies are agencies. Most of the EPA functionaries are civil and profess concern and sympathy. Some, however, are incrediably insensitive and authoritatively obstinate. My personal favorite encounters to date have been the correspondence from the "command post" (what is this a Green Beret movie?) and the statement from EPA attorney Rabino that I was "still on the governments radar screen." I did not realize that my government used such sophisticated articles of surveillance but it is informative to know the truth.

The discovery of a well endowed meal ticket such as Allied Signal prompted renewed frenzy by EPA agents of all description. Quickly the estimate of cleanup sky rocketed from $2 million to $4 million.

In addition, the mood of the Sutter Creek neighbors changed markedly with the prospects of pain and suffering compensations from a huge corporation. The first public meeting (all of which is on record some place) featured genuine anger and disgust by practically everyone. They all know that arsenic exists, no one has apparently suffered from it and their property values and life styles were threatened.

By the second public hearing a few weeks later, public opinion shifted. Obviously the attorneys (all of whom are from San Jose, San Francisco and other non local areas) relayed the wisdom to everyone to go along with the gag and collect some money. I have been told personally by several former friends in Sutter Creek that I shouldn't be offended, they are just looking out for number I. No problem, the EPA endorses this kind of thinking and irresponsible pursuit of unearned increment. The cancer unleashed by the legal system, paradises and bankrupts individuals and ultimately makes commerce and societal interaction impossible.

The months dragged on. My attorney, who by this time had become a friend rather than a paid consultant because I couldn't compensate him anymore, told me things would wrap up by the end of 1995 due to the uncertainly of EPA's further funding by the Congress. Once again he was right.

In the summer of 1995, solutions were determined via several meetings between all the ("P.R.P's) and the EPA. I and others made it clear that we had no money to play with and left. Presumably I am still on their radar sceen.

The solutions included:

1. Dig up the back yards of the subdivision down hill from Mesa de Oro and replace all dirt. Haul the dirt across the freeway to the Allen Ranch and pile it up.

2. Put plastic honey comb like material on the Mesa de Oro slopes and fill with dirt.

3. Cover all exposed lots at Mesa de Oro with 2 feet of top soil.

These mitigation measures are interesting in that they expose the fact that the true intent of EPA activity had nothing to do with public health. Please consider:

1. The downhill subdivision had lower readings of arsenic than Mesa de Oro.

Assuming it is dangerous (which of course has never been proven or even addressed), it seems strange to decapsulate a posion, spread it through the air, haul it across the street and stack it up. Now spaceship earth has the dreaded soil in two places instead of one.

2. The slope previously was stabilized with vegetation, sprinkler system and top soil. The honey comb approach while achieving the real goal of spending barrels of

cash (day laborers earnod $27 per hour prevailing wage plus time and a half overtime) failed to stabilize the hill and suffered several washouts during the rains.

3. This is the most absolute outrage. If the County's requirement that one foot of top soil over exposed areas on the lots was inadequate, and if two feet is the magic number for public health, then it seems that two feet should be required on all lots. Wrong again. No additional top soil was required or placed by EPA in the yards of people residing on the mesa. When asked why not, Commander Shipley said the people didn't want their yards disrupted.

Logic tells us that if one foot of dirt is enough for those who live in the mesa 24 hours per day, and if that one foot was County mandated and put there by the developer, the original approved plan was safe and a permanent solution.

One foot is either safe or it is not. It's either a public health issue or not. The EPA solution reveals the complete unnecessary nature of this exercise which has cost somewhere between four and six million, ruined others as well as myself and pitted the citizens against each other while anticipating multi-million dollar settlements from people and entities that had nothing to do with the mine in the first place.

Subsequent to this needless exercise, the following facts have come to light:

1. The EPA announced in the Amador Ledger Dispatch, December 18, 1995 that not ne single person tested for on the site had elevated arsenic readings and were in fact below the national average. This information was conveniently released after they left.

2. There have been approximately 25 EPA arsenic sites in the United States. The mitigation standard for cleanups has averaged 230 parts per million. The soil at Mesa de Oro was mandated not to exceed 22 parts per million. Might this have anything to do with the blank check charge account the EPA found with the emergence of Allied Signal?

3. Although the EPA told me that when the work was finished, Mesa de Oro would be deemed safe, clean, and able to proceed. Now they refuse to authorize building permits on the mesa, citing my failure to contribute to the cleanup cost

The theory of joint and several liability is that all P.R.P's are responsible for 100% of the cleanup until it is done. Allied Signal got unfairly stuck with the bill. I am broke. The work is done. Maybe Allied should come after me for my portion (a proposal. I of course, reject) but should the EPA be paid twice?

Building permits have been issued in the subdivision downhill from the mesa while cleanup continues. If this is a public health issue, no permits should be issued on or near any site that is yet unmitigated. The inconsistencies once again reveal the true nature of the project. The purpose of EPA is to perpetuate their bloated purposeless,

Mr. WEST. Thank you, Mr. Chairman. Gary, I appreciate you inviting me. My name is Ron West, I am a land planning consultant here in the Central Valley, have been for 20 years.

During the past 6½ years I have worked with a project in Santa Nella, which is effectively the updating of the Santa Nella specific plan. For those that do not know, Santa Nella is a small community in the western Merced area. It is off of the main Central Valley farmland area, and for that reason the county general plan has directed growth to this community. Besides being in the right location, it has already just a maze of Federal and State facilities, both highways and waterways. Highway 33, highway 5, highway 152 all intersect in that area. We also have several major canals. Delta Mendota Canal, San Luis Wasteway, and California Aqueduct all bisect this small community. Its significance to the county of Merced is simply this: It is one of the busiest truck and traveler stop areas in the United States. It is worth an immense amount of money in the next 20 and 30 and 40 years to this community. It is worth an immense amount of money to the county of Merced, which has over 22 percent unemployment.

The update that we are doing in Santa Nella calls for about 18,000 people after a 20–25 year build-out. It calls for about 6,200 homes and it calls for about 7,500 jobs. Our jobs and housing balance, therefore, has been built into this community, it is on the highway routes, we think we have developed after all the many, many years of plans and designing and studies and tests, a good community.

The problem has been this—from day one, the Fish and Wildlife Service has determined that that is a potential habitat area for the San Joaquin kit fox. The San Joaquin kit fox is a tiny little animal, cute, cute, cute as it can be, and that is part of its problem. It is identically genetically the same as a thing called the swift fox that is very common all over the United States in the Western portion. But yet, for reasons I am not sure I understand, it has been designated as an endangered and threatened species. And along the western hills of the Valley, historically they were able to find a home.

Now what has happened in Santa Nella is that extensive agricultural uses have come in over the many, many years. A variety, as I mentioned of Federal and State facilities have been built—highways, dams, including a huge reservoir west of us. And adjacent to that is a State game reserve. So there has been a lot happening. A new national cemetery has just been built right outside Santa Nella. So this is not a new, virgin area of open land. Santa Nella has had an existing specific plan for many, many years, it is simply being updated.

Right now we are not through our hearings and we will not be through until this summer. We are concerned that we continue to get opposition from the wildlife agencies, they continue to try to stop this project and either ask for wild amounts of money or land dedicated someplace that would stop this project. As we speak, one of the real key portions of this development is being held up, and that is the factory outlet stores which will start providing our job base down in that area. It has been through extensive studies, it has been zoned for many years, it is being built on a parcel that

has had development on it for over 15 years but yet every time we turn around that project continues to get stopped again. The latest was they had to transfer some water from one district to another. That provided Federal agencies an opportunity to jump back in and go lobby the Bureau of Reclamation to stop this project again.

What I am appealing to you today is that folks, it is time we stopped making enemies of the Federal Government or out of the citizens. We are all in this thing together. The owners in Santa Nella are trying to develop a good community. I think the agencies that are trying to stop it are not doing it because they are bad people, I think they are just misguided and I think they do not have enough good guidance from up above that says folks, here is what habitat is and here is what it is not.

Recently, the Supreme Court has made I think a ruling that helped clarify what is habitat, that is the Sweet Home case. I think the Congress has to pass something that is going to take what that Sweet Home case said in terms of defining habitat, and put it into the law and make it clear. To stop us and say this is potential habitat, you cannot build here even though there are no animals is simply not fair and it is not good business. Thank you.

Mr. MCINTOSH. Thank you, I appreciate that.

Our third panelist on this panel is Mr. Robert Rucker. Mr. Rucker.

[The prepared statement of Mr. West follows:]

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April 1, 1996

TESTIMONY before the SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES & REGULATORY AFFAIRS; of the HOUSE COMMITTEE ON GOVERNMENT REFORM & OVERSIGHT;

"Hearing on the Impact of Federal Regulations on California's Central Valley"; Red Lion Hotel, Modesto, California (panel 2).

Honorable Committee members:

My name is Ron West, and for the past year I have been in private practice as a land-use consultant in the Central Valley. For the previous 5 1/2 years I served as Director of Forward Planning for Kaufman & Broad, Central Valley, Inc. During the prior 13 years, I provided planning services to local property owners, both in private practice, and as Planning Director for two other major Valley homebuilders and developers.

Almost all my efforts have been directed toward housing: single family, multi-family and some elderly. I am proud of my contribution to the building industry, and active in the Building Industry Association of Central California. Along with food, I consider the product my Industry produces to be one of two most basic and important to the people of this Nation.

Over the past two decades in local planning and entitlement, I have dealt with a variety of government regulations, processes, and agencies. I have witnessed the ups and downs of the national and local economies and of the housing industry, and have seen a variety of planning trends and changes. But I have also seen the consistencies, the basic human needs, wants and dreams part that hasn't changed in the last 20 years - and probably much longer than that.

Ron West Testimony
Modesto, Ca.: 4/1/96

In general, I believe that well-intentioned Agencies and employees of various Governments, including Federal, have sometimes unreasonably and/or unfairly added cumulative time delays, costs and requirements to projects in the Central Valley, including Santa Nella, my example today. And I believe that those additional costs and delays negatively impact and discourage even appropriate and well-planned developments. The result is an overall dampening effect on investors, unnecessary cost increases, and time delays.

My example today, of impacts of Federal Government actions and policies on economic development in the Central Valley, is an ongoing story of a small but growing, and economically significant Community. Santa Nella is a busy, highway-oriented Community on the edge of the foothills in western Merced County. It has an existing Community Specific Plan (CSP), but property owners were asked by County Planners to cooperatively fund a complete Update of the CSP, Master Plans, and EIR.

For the past 6 1/2 years, those planning, environmental review, and update efforts have been underway. Property owners have spent over $1.5 million in direct costs, and have accrued several millions in land carry costs, all of which are ultimately reflected in the prices paid by residents and businesses. A variety of land use changes and updates have been proposed and studied in the Update, but the net CSP planning area increase is only 92 acres (approximately 4%).

Property owners were specifically directed here by the County General Plan, away from more prime agricultural lands on the central valley floor, and close to major existing transportation routes. Santa Nella includes the "golden triangle" area where Interstate 5, and State Highways 99, and 33 intersect. The area is not just a maze of State and Federal highways, but also waterways, with the California Aqueduct, Delta Mendota Canal, and San Luis Wasteway also bisecting the Community. The existing and future infrastructure challenges have been formidable, but not as difficult as some of the political/environmental roadblocks.

My cumulative experience, and the last 6 1/2 years of project management in Santa Nella, have very much convinced me that it is time the governments and citizens in this great Nation quit treating each other as the enemy. That is essentially my plea

today. To paraphrase a wonderfully simple question which emerged from a terribly complex situation: "People, can't we just all try to get along?" Can't we all just agree that reasonable, scientifically sound, fiscally responsible, environmental protection is everyone's concern, and that it should be a useful planning tool, not a weapon? Can't we prevent (and resist) the use of wildlife for offensive or defensive political purposes? I believe we can, and must. And I believe that those specific goals must be clearly identified and enacted by the Congress of the United States. With well over 50% of California owned by Federal and State governments, and only 3-4% of the State urbanized, there is no justification for draconian government intervention. Imagine, instead, focusing the creative, business, and public efforts of this nation toward solving the problems facing our people, instead of wasting time, money, and human resources on the never-ending "wars" between citizens and government.

Unlike others you have heard testimony about, the Santa Nella Specific Plan Update project has not been driven into bankruptcy or had it's viability destroyed by government regulations and/or agency actions....yet. And hopefully it will not.

However, we are just now finalizing our EIR, and have yet to begin our entitlement hearings - and there continue to be areas of potential conflict between the USFWS and property owners. I can only hope that the project's extensive studies and good faith efforts to address all reasonable impacts, will allow entitlements to proceed without further serious USFWS opposition. I would love to use this 6 1/2 year effort as an example of how environmental issues can be reasonably addressed. That has not necessarily been the case in the past, but can, hopefully, be in the future. And if we are successful, it will be because property owners were willing and able to proactively insist that good, thorough science be used, and that realistic impact/mitigation assumptions made. This has not been an easy or inexpensive process.

The ESA issue in Santa Nella is the San Joaquin Kit Fox, a tiny species virtually genetically identical to the common Swift Fox, yet listed as Federally Endangered and State Threatened. Long ago, before extensive agricultural use of this area, and before the massive State and Federal highway and canal projects,the huge San Luis Dam and the new National Cemetery, the Kit Fox probably found this area satisfactory habitat. Today, however, numerous studies

have failed to indicate the presence of these animals in the CSP area. The essential issue for USFWS has been whether any such animals could still "potentially" exist in the area, now or in the future, and the concept of "potential habitat" is central.

The U.S. Supreme Court in a recent landmark case (Babbitt v. Sweet Home Chapter of Communities for a Great Oregon), has done much to very boldly and clearly address this question of when an area can be considered "habitat". Also, ongoing legislative efforts continue to include the requirements of good-science, legitimate peer review of findings, and economic realities as part of environmental review. These obviously critical factors must be incorporated into all Federal and State environmental legislation, and this must be a priority. That can prevent other situations like Santa Nella, where essentially there is little or no clear "problem", and the "standard" Agency assumptions don't apply, yet the political uncertainties, time delays, and additional costs take their toll on yet another important part of the Central Valley's future.

Santa Nella is one of the busiest truck and traveler stop areas in the nation and is extremely important to Merced County's economic future. There is much to lose for everyone if, for example, further unnecessary delays and costs - or threats to project viability - were to occur.

IN SUMMARY:

1. In general, the police actions by the Federal (and other) Government Agencies intended to protect the environment and our citizens, must be based on sound economic principles, accurate science and assumptions, and clear identification of real harm (or eminent harm) to real endangered species. That requires the Congress to follow the U.S. Supreme Court's example of attempting to clarify this law, not leave it open to individual Agencies or individuals to try to determine what it means. And then, the overall economic, social and other realities must be considered as mitigation options are developed...if necessary. How much should the property owners and tax payers be asked to pay for what level of "protection". Again, reasonable, good-faith efforts are assumed, and special interest "environmental" groups must not be allowed to use the laws as weapons for their own purposes.

Ron West Testimony
Modesto, Ca.; 4/1/96

2. Specific to Santa Nella, I believe this is, in some ways, very "typical" of the "potential habitat" situations. And hopefully Supreme Court decisions and legislation will continue to clarify this issue. Government agencies and employees must be given a clear set of goals, guidelines and priorities, as well as the requirements for good science and economics. If this course were followed, the environmental "issues" in Santa Nella, and many other Santa Nellas all over the Country, could be discussed and resolved in a calm, businesslike and timely manner.

However, we cannot forget that if the Santa Nella project is approved as currently proposed (no additional mitigations), it will only be because the property owners have fought a long, difficult, and costly fight. This was an unnecessary fight against unreasonable assumptions and mitigation demands. And it was a waste of public and private time and money. And, of course, there is a direct impact on housing affordability and the cost of doing business, two basic elements of the "American Dream".

I appreciate the opportunity to provide this input. I am not representing any of my particular clients or associates today, but I believe my sentiments are consistent with most of those who are working to make the great Central Valley a good place to live and work and build their dreams. Thank you.

Mr. RUCKER. Thank you. I am Bob Rucker. I am a developer of single family residential, multi-family residential and commercial projects in Merced. I was born and raised in Merced and have resided there most of my life.

I would like to start off by giving you a background of what we think is an ill-conceived manner on which FEMA started off developing flood maps for our area. It appears that back in the last heavy floods that we have had in Merced, which was 1955 and 1956, that FEMA took the aerial photographs from that area and developed flood maps. And anything that showed a reflection on these flood maps, whether it was half an inch of water or 2 feet of water or whatever, was considered to be in a flood zone.

Since that time we have, through Federal tax dollars and local dollars and so forth, have built the New Exchequer Dam, which was a major flood control dam. The Castle Dam was built in the last few years at an expense of several millions of dollars of taxpayer money from both Federal level and local level. And all of these were to mitigate the existing flood problems.

As an example of what we believe to be these excessive regulations in Merced, three of us a couple of years ago bought a small industrial park, a finished industrial park, that had 13 completed lots on it that we were under the impression and had been told were ready to be built on. We thought we will build a few industrial buildings, create a few jobs and hopefully make a buck on this project. We bought the project, we had some financing in place on it with a local bank and we sold our first lot off to a local builder. And then we discovered that FEMA had redone the flood maps, and our property in the event of a flood would have 5 feet of flood water on top of it, which rendered it worthless—I mean virtually worthless to build on.

So through the help of our Congressman, Gary Condit, and his chief of staff Mike Lynch, our public works director, our engineering firm and the person that worked for FEMA at the time in San Francisco, we commissioned an engineering study and had a hydrology study done at an expense of a little over $18,000, spent another $12,000 on local engineering, and finally through the help of all the people I just mentioned, came to the conclusion that the flood levels could be lowered, which would at least allow us to halfway economically build industrial buildings on this site. This site, by the way, is right next to Castle Air Force Base and right below the Castle Dam that I mentioned just got built for flood control purposes.

We did come to that resolution, we built one building. Then the person that worked at FEMA retired, a new guard took over at FEMA. They have since called the county or whatever and told the county to cancel our floor variance. The county has been threatened with punitive recourse if they did not follow through on that so the flood variance has been revoked. The property is not buildable and we are sitting there basically with a worthless piece of property until this gets resolved.

As a matter of financial necessity, there is a resolution about to be agreed upon with the help of the Army Corps of Engineers. FEMA is finally going to take into account the reduction of flood

danger, if you will, from the newly built Castle Dam, which to this point they do not even consider exists.

In addition to all these studies that I have mentioned, we have testimony that we have sent to FEMA from local residents who have lived there for years and years and years, back in the time of the early floods, that—one of them owns a local water district and has been there for years—has testified that the potential waters that were standing in that area at the time were far below the levels that have been mitigated by existing county ordinance and existing flood diversion control.

This is just one of many examples and frustrating experiences that we are all going through here in the Central Valley dealing with FEMA. It is certainly a hindrance to economic development, job creation and enjoyment of private property rights in our area. I think it is something that is really worth Congress looking into and I thank you.

[The prepared statement of Mr. Rucker follows:]

Congressional Hearing on Regulatory Reform Modesto, CA
April 1, 1996
Subject: FEMA
Presenter: Bob Rucker
Rucker Construction, Inc.

My name is Bob Rucker. I am a developer and builder of single family residential, multi-family residential and commercial projects. I was born and raised in Merced and have resided in Merced most of my life.

Thank you for allowing me to make a short presentation regarding what we believe to be excessive restrictions imposed by FEMA - specifically the issue of flooding in Merced County. Our community, as well as others in the San Joaquin Valley, have experienced what we believe to be excessive, time-consuming, and expensive restrictions placed on us by FEMA.

1. As an example, starting with flood maps, we believe the flood maps were ill conceived by utilizing aerial photos taken during the heavy winter rains in 1955-56. Any and all areas showing a reflection on these photos were considered as being flooded whether it had a 1/2 inch of water or 2 feet of standing water. This policy virtually rendered our entire community in a flood zone.

2. The winter of 1955-56 was the last time that any significant flooding did occur. Since that time, the New Exchequer Dam, Castle Dam, flood control structures and diversion structures from one stream to another have been constructed and installed to control any potential flooding and run-off in our water shed.

3. As an example, last winter (1994-95) we received just over 18" of rainfall, about six inches above normal. During one storm in our watershed area an over 100 year rainfall event took place. Bear Creek - the major creek and flood control facility for Merced City, was able to contain all of the runoff without any urban flooding. This was accomplished through flood control structures that I have just mentioned and are already in place upstream.

4. We have records for rainfall that go back over 100 years. In that time we have <u>never</u> experienced the 100 year rainfall event that the National Weather Service defines as 3" in any one 24 hour period. The 1955-56 winter did have a rainfall of about 2½" in a forty eight hour period, causing standing water and flooding of minimal impact in certain areas of our city.

5. One example of the problems we are experiencing is a project I have been involved with for the last few years, "Santa Fe Business Park," which has been held up due to excessive regulations imposed by FEMA. We purchased this project as a completed industrial park subdivision which consists of 13 finished lots ready to be built on. When this project was developed, it was in an "A" Zone. The "A" Zone is an area of undetermined flood depth by FEMA standards and regulations. The

Merced County ordinance requires finished floors to be constructed at elevations of two feet above existing grade. After we purchased these completed lots, we realized that a revised flood map had been created establishing a new flood elevation of 165 feet. This new elevation meant that flood waters would cover our property with a depth of at least five feet of water but that the properties contiguous to us did not show any flooding. We then spent in excess of $30,000 on engineering and had a hydrology study done, and through cooperation of our Congressman, Gary Condit, the Merced County Public Works Department, the Army Corps of Engineers and the FEMA representative from San Francisco that was employed at the time, a determination was made that the maximum water depth in the predicted one hundred year flood should be at an elevation of 163.8 feet which would allow construction of industrial buildings to at least be partially financially feasible. We applied for and were granted a flood elevation variance by Merced County. Since then the guard has changed at FEMA and our flood variance has been revoked and the County has been threatened with penalties if they did not revoke our variance, thus prohibiting the financial feasibility of new construction on this site due to extreme cost. As a matter of financial necessity, we are close to reaching a resolution of this problem but, nonetheless, we are convinced that this property should be out of a flood zone and that these excessive costs and time requirements placed by this government agency is unnecessary. In addition to the above mentioned costs, we have testimony from long term residents of this area that during the winter storms of 1955-56, this project site may have had standing water at depths of 12-18 inches, but no greater. The original A Zone ordinance would mitigate this. As I mentioned before, since the 1955-56 winter storm, the New Exchequer Dam, Castle Dam, and other flood water control facilities have been constructed.

6. Flows developed by FEMA contractors have steadily been increased over the years to levels nearly triple what is likely, based on historical information available. Again, we believe the increases were made without sound data and for the purpose of showing the creek banks would be overtopped and flooding would result in a 100 year storm event. This all for the purpose of extracting flood insurance dollars from our county residents as well as other San Joaquin Valley residents. This is one example of an experience of land owners, developers, and local government spending a multitude of time and money in attempting to reach agreement on acceptable flood levels to satisfy FEMA. We are firmly convinced that the contractor who prepared the flood studies for the area for FEMA used data that was not appropriate for the study. Had an independent analysis been made based on the more than 100 years of actual rainfall data, a more realistic depiction of the extent of flooding and flood depths would have resulted.

7. A related issue is the recently completed Castle Dam. This is a useful flood control project constructed as a joint effort of local and federal government, particularly the Army Corps of Engineers and the County of Merced. However, although constructed with local and federal tax dollars, this will serve no purpose in the eyes of FEMA until the FEMA engineers have done duplicate studies. Congress should look closely at the issue of allowing FEMA to decide the benefits to the people

after tax dollars have been spent and good sound engineering practices have been completed.

8. Our county public works director has been studying the background data and supposed causes of flooding in our community and would be willing to participate in a study of the excessive and costly burdens placed on all of us by FEMA, which not only costs the taxpaying public a significant amount of money but is an obstacle to affordable housing, economic development and creation of much needed jobs.

Thanks again for letting me speak to you today. I urge you to take the appropriate steps in alleviating these unnecessary burdens.

Mr. MCINTOSH. Thank you, thank you very much.

This has been very telling, that there are three different agencies creating problems for growth and development in the Central Valley here.

I wanted to ask a couple of followup questions, particularly, Shel, of yours. One of the things that fascinated me when I started reading your testimony is what does EPA plan to do with the rest of the area in that 120 mile long swath of land? Are they treating that all as a potential site that will need to have remediation?

Mr. THOMPSON. Yes. In the Mother Lode, first of all, the topography is such that the hills come down in little gulleys. All of the towns in the Mother Lode with flat surfaces are flat because of mine tailing fill that has been put in there over the years. So they have their work cut out for a long, long time. They can go to every little community and do the same things that they have done with us. And the worst part about it is they admit, they admitted in Time magazine, that it is very debatable as to whether or not mine tailings and arsenic are harmful to people. But because arsenic is a carcinogenic and any time there is a hint of a question that public health or safety is involved, they have carte blanche to deal with the issue as they see fit and to make whomever pay that they determine is a responsible party.

Now I did not put it there and all the other people who are on the hook did not put it there either. This was put there starting 150 years ago by the 49ers.

So in answer to your question, yes. We are finished where we are, but do not let them go further because they can paralyze every town in the Mother Lode if they want to.

Mr. MCINTOSH. When they finally said you could put 2 feet of topsoil over it, does that satisfy them that the risk has been removed, or the potential risk?

Mr. THOMPSON. They told us last summer that when that was done and they were gone, that we could continue. Just in the last couple of months, they have told us that we cannot pull building permits on our subdivision, not that the work has not been done and not that it has not been done to their specifications, but because we personally did not contribute to their clean up effort, we cannot pull building permits.

Now last summer, they sent me a letter and told me they were going to fine me $25,000 a day, unless I threw who knows how much into the pot. I respectfully declined, and so now I am where I am. So there is no consistency with what they do.

Just recently, I found out that there have been about 25 other arsenic sites that EPA Superfund or EPA has dealt with. They have had to clean their surfaces up to 230 parts per million, we have to do ours 22 parts per million, which seems a little strange. Plus, the State of California arsenic requirement in drinking water that you drink is 50 parts per million. So there is no consistency with what they do, whatsoever.

Mr. MCINTOSH. So they are not looking at science. And I thought I recalled in your testimony that there was some expert evidence that that type of arsenic, the way it was fastened, was not soluble in water?

Mr. THOMPSON. Exactly. There are two types of arsenic. One is bio-available and one is not. The type that is not bio-available, you can literally drink it or eat it and it passes right through in 24 hours. Originally they told us that is why you cannot test for arsenic in people because you will never find it.

So all the tests, using their data—independent chemists and independent geologists have shown that from their data, this particular arsenic is arsenopyrite, it is not water soluble and it is not bio-available and it is not migratory. And those are the three tests that would tell you whether or not it is harmful. They do not care.

Mr. MCINTOSH. It is incredible to me that they are just ignoring the facts and moving forward with the program.

Ron, I wanted to check with you on the Fish and Wildlife Service. Have they listed the San Joaquin kit fox or is that still being considered?

Mr. WEST. Yes, it is listed as federally endangered and State threatened. So it is on the list. The problem is it is not on our site. [Laughter.]

Mr. MCINTOSH. And so the fact that your site might potentially some day be habitat for it is what is causing the problem.

Mr. WEST. That is what they are getting at. They are saying if animals were to get there somehow, they could survive. Well if I fed them and gave them water, they could survive in my living room, but that is not potential habitat either. [Laughter.]

Mr. MCINTOSH. Maybe you ought to find the potential habitat of the EPA headquarters or something, I do not know.

That is amazing. And so with that, they are blocking any type of further work on the plan until you reach an agreement on an alternative?

Mr. WEST. They have responded to all of the environmental documents saying you cannot do this, you have got to have 1 mile wide corridors here and you have got to dedicate land here and you have got to give money there—all the routine things that happen. But they are also—and more dangerously, I think—they are going to other Federal agencies like the Bureau and they are saying we do not have enough information to stop this with what falls in our territory, you guys do not let them transfer water. That is the dangerous part.

If an agency can come on your site and say something is here that does not allow you to develop this site, that is one thing, but when they cannot find that and have to go to another agency or go to Cal Trans and say if you approve an encroachment permit for this community, we are going to go back to Washington and give you guys trouble. That is where the danger comes, so there is a lot of ways to stop a project besides directly——

Mr. MCINTOSH. What do you think their motive is, if they cannot identify——

Mr. WEST. The motive that I understand is that they are concerned about a north-south corridor between the kit foxes that live 50–60 miles this way and some that live 50–60 miles down the Valley. They are concerned that those two populations will somehow be cutoff from each other ultimately and that they will not be able to inter-breed. Well, kit foxes only travel a mile from where they are born, so if they are going to go 100 miles, it is going to take

them 100 generations even if they know where they are going, to get to Bakersfield.

So it is a theory that has not been shown or proved by anybody but it is the movement theory that they keep saying that nothing between here and there can really get in the way of these animals because they will not be able to migrate back and forth.

Mr. MCINTOSH. As if nature cannot adjust. That is interesting. I appreciate you bringing this forward. I think this will be a good example for us to use as we move forward with reform in that area.

I have no further questions. Gary, do you have questions?

Mr. CONDIT. Well, I might just followup. Just so that there is some credibility established here—Shel has got an impeccable reputation over the years of being an environmentalist and being involved in many of the groups locally that would be perceived to want to protect the environment and so on and so forth.

And my comment to him is since EPA opposed the project, does he feel like his environmental credentials were challenged somewhat, do you feel like that was an environmental policy statement that was constructive or do you think it was anti-environmental? What is your reaction to that? I mean as one who comes out of that movement, why do you think that occurred and what is your reaction to that?

Mr. THOMPSON. My reaction is that they are using the power of the environmental movement incorrectly. I do not think anyone in this room is in favor of dumping oil in water or dirty air or bad land use. There are degrees, everyone has a difference of opinion, but no one is against the right aims of the environmental movement. But what they are doing, they have created a tremendously powerful bureaucracy and they are using it, they are using—as Ron said, they are using agency and inter-connection of agency to stop things that they personally do not want to see happen, or to perpetuate their personal bureaucracies.

I will vote for any environmental issue today that is a real one. The other day in the newspaper there was a thing about how the Ku Klux Klan around here burned a cross and so they were trying to get the EPA to knock them out on air pollution standards. Well, the real issue is if the Ku Klux Klan is a bad thing, run them out of town, do not let them do their thing, but do not take an issue that is totally unrelated and make it a sham, because the people lose all respect for the perpetration of a sham. And that is what the EPA has done to the environmental movement.

Mr. CONDIT. Could I take that to mean it may be a perpetuating of their own bureaucracy and protection of——

Mr. THOMPSON. Absolutely. They told me in the first meeting that they bill at $125 an hour—now this was State EPA—and so I asked how much will this cost on our project, they could not give me a clue. So in all the public meetings, I continued to ask the question, you could not say what it was going to cost at the beginning, how much have you spent to date? Surely you can tally up the hours that your people have spent. They never could, they never would. Finally, on one meeting, they said well we have spent about $18,000 to date. I said wait a second—I think there were eight people from the EPA there, that is $1,000 an hour. That was the third meeting we had been to. Their coordinator full time, 40

hours a week, is $20,000 a month. I said your math does not add up, at least give us a reasonable answer. They have never done that. But yet they tell you right from the start that you will pay and the logical question is OK, what is it going to cost or give me a clue—we cannot give you a clue and then they will not give you a clue. And the coup de grace was when one of the EPA lawyers said Mr. Thompson, you are still on our radar screen. Now that was a very offensive statement to me, but that is the way they think—you are still on our radar screen.

Mr. CONDIT. So tell me, what is the current status of the land upon which the topsoil was placed, is it eroding or——

Mr. THOMPSON. Pardon me?

Mr. CONDIT. Is it eroding?

Mr. THOMPSON. Yes. What they did—our lawyer told us several months ago what would happen eventually at the end of 1995, because there was uncertainty whether the EPA would be fully funded by Congress, there would be this rush to get it finished, and whatever happened, that would be good enough. Everything he said came true. They put the soil there except there are 44 lots, they put the soil on all the lots except on the houses that were finished where people are living.

So it looks like this (indicating). Here is a high lot, here is a low lot with a house on it—peaks and valleys. So there has been erosion from the high lots to the low lots and down the slope, but more importantly, my question continues to be, if 1 foot of soil, as we put on, is not safe, you have got 10 or 12 people living on those types of lots. Now if your 2 feet is safe and the 1 foot is not, you had better put another foot over on the yards where the people are living. They said well the people do not want that. It is obviously not an issue of public health, and if it were, there would be a single standard. But there is not.

Mr. CONDIT. Let me—I will finish up here, I am familiar with Bob and Ron's case extensively. I just would ask each of them, Bob in his case, do you have any suggestions on how we might deal with FEMA in terms of reforming that would have helped in your situation and, in your situation, Ron, where you had Fish and Wildlife Service. Could you suggest any specifics, either one of you, in your case, that we might be able to take with us?

Mr. RUCKER. I think we would be happy if FEMA would just use actual statistical data. In the last few years their flood levels have tripled and it seems like every time a project needs to be federally funded, whatever figures have to come out to make it feasible comes out and then after the project is funded, the figures change. We have data over 100 years old and we have never had in Merced what the National Weather Service says is a 100-year flood, which is 3 inches of rainfall in a 24-hour period. Last year, we had 6 inches above normal rainfall. We had an event going down Bear Creek, which is the main creek and flood control facility through the city, considered to be over a 100-year event, and we did not have any urban flooding at all. We still have the ability to divert water into other streams and canals.

So, it just seems like FEMA comes up with whatever figures they want to come up with that are convenient at the time. And all we ask is that they use statistical data. And last, I am wondering why

when the Army Corps of Engineers is charged with the custodianship of our navigable waterway and dams and so forth, why they are not the ones that are establishing the flood flows. They have nothing to benefit from flood insurance premiums.

Mr. CONDIT. Ron.

Mr. WEST. In Santa Nella, Gary, I think we would be satisfied if the agencies would use good science as we go to our hearings. And as a question comes before them, if they will simply look at what the studies are showing and what the scientific reality is, I think we would come out just fine.

Mr. CONDIT. Thank you very much.

Mr. MCINTOSH. Thank you all. I appreciate your testimony, it has been very, very helpful to us.

Let me call forward now the second panel, which is a series of individuals who will testify on the impact of regulations on California water policies. Mr. John Roberts, Ms. Norma Cordova, Mr. Dan Nelson and Mr. Allen Short. Welcome to all of you.

If I could ask each of you to please rise.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Please let the record show that each of the witnesses answered in the affirmative.

Our first witness in this panel is John Roberts, who is the chief executive officer of the California Rice Industry Association. Mr. Roberts, thank you for coming forward today.

STATEMENTS OF JOHN ROBERTS, CHIEF EXECUTIVE OFFICER, CALIFORNIA RICE INDUSTRY ASSOCIATION; NORMA CORDOVA, DIRECTOR, SAND CREEK FLOOD CONTROL DISTRICT; DAN NELSON, EXECUTIVE DIRECTOR, SAN LUIS DELTA MENDOTA WATER AUTHORITY; AND ALLEN SHORT, GENERAL MANAGER, MODESTO IRRIGATION DISTRICT

Mr. ROBERTS. Thank you, Chairman McIntosh, and also thanks to Congressman Condit.

We could probably have written a book on this subject; that is, on Federal over-regulation, redundancy and abuse of the regulatory mechanism. But Congressman Condit has been one of the few to listen to us, and for that, we will be forever grateful.

For the past 15 years, our organization has been actively engaged in water quality regulation. Before 1985, we played catch-up to address real problems of significant public concern with regard to water quality. Taste and odor problems in the drinking water supply of the city of Sacramento were being attributed to rice field discharge that ended up in the Sacramento River. The loss of fish was similarly attributed, at least in part, to rice production in the Sacramento Valley.

In response, a cooperative effort was begun under the watchful eye of California's Regional Water Quality Control Board, to develop solutions which would protect the Sacramento River and allow the continued production of rice in the Sacramento Valley. Thus, began what is known as the Rice Pesticide Control Program.

This program has widely been acknowledged as a huge success. Today, rice chemicals do not show up in Sacramento's drinking water or in the Sacramento-San Joaquin Delta or San Francisco Bay.

As a result of these and related achievements, California's EPA has called the program one of the most successful water quality programs in the United States.

How did this industry and its Government partners accomplish this? Well, a great deal of effort was put into developing control measures. One of these measures consists of growers banding together to create what are commonly called closed systems into which their field water flows. This is called tail water, and it is held, allowing agricultural chemicals to dissipate before being released into public waters. These systems are encouraged by California's regulatory authorities. Importantly, they are expensive to construct and remain costly to operate and maintain.

In 1984, as if to prove the old adage that no good deed goes unpunished, the State's Regional Water Quality Control Board, without warning, announced the closed systems in our rice fields to protect the Sacramento River, the delta and the bay, were in fact waters of the United States, and subject to the full regulation under the Federal Clean Water Act. In essence, we were informed that water in these constructed agricultural systems would be held to the same standards as the most pristine mountain streams.

Every time we asked State regulators why they were trying to subject our constructed agricultural ditches to the same regulations as mountain streams, they say that it was demanded by U.S. EPA, acting under the Federal Clean Water Act.

Bewildered, we took our case to the headquarters of U.S. EPA Region IX in San Francisco. U.S. EPA Region IX staff would give us no guidance as to which waters were properly regulated under the Federal Clean Water Act. We were told that EPA attorneys believed they could define the Clean Water Act in a nearly limitless fashion, and EPA seemed resentful of the fact that we pursued clarification on the matter.

It was at this point that we were contacted by Congressman Condit, asking for suggestions for a Corrections Day bill. We immediately responded affirmatively and what resulted was H.R. 2567, the Constructed Water Conveyance Reform Act of 1995. The bill makes it clear that the Clean Water Act does not require States to regulate water in constructed conveyance facilities. The idea came from visits to other States which have taken the position that these facilities need not be regulated. It was reinforced by visits to U.S. EPA headquarters in Washington, DC, where the net results of our meetings was that the agency had no desire to regulate these waters. Not only could we not find anyone who advocated the position being advocated by U.S. EPA Region IX in California, we were unable to find anyone who even thought it was a good idea.

Once H.R. 2567 was introduced, however, EPA began to sing a different song. In what appeared to be a closing of the ranks in support of Region IX, U.S. EPA immediately made it know that our efforts with Congressman Condit were not appreciated. Region IX staff made it clear that their cooperation with us up to this point would be difficult to continue in the light of our efforts with Congressman Condit.

EPA's preferences, as we understand them, would impose a massive and unfunded workload on the State. For example, there are

more than 6,400 constructed conveyances in the Sacramento Valley of California, the combined length of which is over 20,000 miles.

U.S. EPA's reaction to the bill indicates that despite Congressional intent that Clean Water Act regulations apply to navigable waters, the agency believes that anything that is now or ever has been wet is fair game. The agency's inability or unwillingness to clearly define what waterways it believes are waters of the United States and which are not, keeps everyone guessing. This costs industry and taxpayers money, not to mention making Federal guidelines seem arbitrary and subject to the whims of Federal agency staff.

Thank you.

Mr. MCINTOSH. Thank you. I appreciate that. I remember when that bill came through on our Corrections Day committee and Gary was working to get that through.

I have got several questions that I will ask you when we are finished with the panel.

Mr. ROBERTS. Thank you.

Mr. MCINTOSH. Our next witness is Ms. Norma Cordova, who is the director of the Sand Creek Flood Control District. Thank you for coming today and we appreciate your testimony.

[The prepared statement of Mr. Roberts follows:]

National Economic Growth, Natural Resources and Regulatory Affairs Committee
U.S. House of Representatives

Hearing on the
Impact of Federal Regulations on
California's Central Valley
April 1, 1996
Modesto, California

TESTIMONY OF THE CALIFORNIA RICE INDUSTRY ASSOCIATION REGARDING THE NEED FOR REGULATORY REFORM

in the
Administration of the Clean Water Act
in Drains, Canals and Ditches
in the
Central Valley of California
by the
California Rice Industry Association
John R. Roberts III, Executive Director

The California Rice Industry Association is a not-for-profit trade association made up of California's leading rice mills. Our members include farmer-owned cooperatives, large corporations, partnerships and small family-owned operations. They handle approximately 92 percent of California's annual rice crop.

For the past 15 years, CRIA and its predecessor organizations have been actively engaged in matters of water quality regulation. In the early days, before 1985, we were playing "catch-up" to address real problems of significant public concern. Taste and odor problems in the drinking water supply for the City of Sacramento were being attributed to rice field discharge that ended up in the Sacramento River. The loss of fish was similarly attributed to rice production in the Sacramento Valley.

In response, a cooperative effort was begun. The rice industry, the California Department of Pesticide Regulation and the California Department of Food and Agriculture joined forces under the watchful eye of the State's

Regional Water Quality Control Board to develop solutions which would protect the River and allow the continued production of rice in the Sacramento Valley. Thus began the Rice Pesticide Control Program (RPCP).

The RPCP has been widely acknowledged as a huge success. No longer do we receive complaints regarding the effect of rice field discharges on Sacramento's water supply. Today, rice chemicals are rarely even detected at the Sacramento water supply intake. And they never show up in Sacramento's drinking water. Moreover, those concerned about the impact of rice pesticides' flow into the Sacramento-San Joaquin Delta and San Francisco Bay and harming sensitive aquatic life now acknowledge rice pesticides simply aren't found there any longer.

As a result of these and related achievements, California's Environmental Protection Agency has called the RPCP one of the most successful water quality control programs in the nation.

How did the industry and its governmental partners accomplish this? A great deal of effort was put into developing control measures. One such measure is holding water on fields until it no longer exceeds protection levels established for truly public waterways.

Some efforts, however, were not so easy or inexpensive. In a number of areas, growers banded together to create what are commonly called "closed systems," into which their field water flows. That "tail water," as it is called, is then held, allowing agricultural chemicals to dissipate before release into public waters. These systems were encouraged by California's Regional Water Quality Control Board. Many system designs were approved by the California Department of Fish and Game prior to construction. Importantly, these systems were expensive to construct and remain costly to operate and maintain.

Despite these measures, and our successes, the regulatory effort intensified. Even while regulators were claiming credit for the success of the

RPCP, standards were made more restrictive and more waters were being subjected to regulation.

Finally, in 1994, as if to prove the old adage that no good deed goes unpunished, the State's Regional Water Quality Control Board, without warning, announced that the closed systems constructed in California rice country to protect the Sacramento River, the Sacramento-San Joaquin Delta and San Francisco Bay were, in fact, "waters of the United States," and subject to full regulation under the federal Clean Water Act. In essence, we were informed that water in these constructed systems would be held to the same standards as the most pristine mountain streams!

We were successful in dissuading the Board from imposing such a standard in our constructed agricultural drains and closed systems in 1994. But the pressure to do so remains, as does the uncertainty and the threat to the tremendous investment that was made to protect truly public waters with government oversight and encouragement. It was, and is, our "best management practice."

Every time we ask State regulators why they are trying to subject our constructed ditches to the same regulations as mountain streams, they say it is demanded by U.S. EPA, acting under the Clean Water Act.

Bewildered, we took our case to the headquarters of U.S. EPA Region IX in San Francisco. We were told there that the Clean Water Act contained a great deal of flexibility and that the federal agency was *not* demanding that the State require the application of the Clean Water Act in constructed drains, ditches and related conveyances. U.S. EPA assured us that not all constructed waterways were "waters of the United States."

Thinking our problem was solved, we returned to Sacramento to be told that the State's regulators knew all about U.S. EPA's line regarding flexibility, but had been unable to ever find any action or written indication of the agency's view; only action that went in the other direction. We were told that

every attempt to craft a creative solution met with U.S. EPA disapproval. As to what types of water courses or facilities actually were waters of the United States, State regulators smiled and asked us if their federal counterparts had offered any guidance.

Our further inquiry began to bear out what the State was saying. The vehicle most often touted by the U.S. EPA as providing flexibility had proved nearly impossible. Conducting a Use Attainability Analysis, a formal process for determining that certain standards cannot be met, is to be followed by the adoption of Site Specific Objectives. This process was tried by the State on two water bodies in the San Joaquin Valley. The effort cost more than $2 million and was rejected by U.S. EPA. Understandably, we're reluctant to spend that kind of money on a process the full resources of the State of California couldn't successfully complete. Even if we could, why spend the money? In effect, we would be indicating we agree that farm ditches come under the purview of the Clean Water Act, and unless specifically and individually exempted, must be as clean as streams in the Sierra Nevada mountains. We think this is wrong, and not consistent with what Congress intended when it adopted the Clean Water Act.

Stated simply, U.S. EPA Region IX staff would give us no guidance as to which waters are properly subject to the Clean Water Act. Instead they suggested we try other avenues to gain the relief and certainty we were seeking. We were also told that EPA lawyers believed they could make the definition nearly limitless, and seemed resentful of the fact we have pursued clarification on the matter.

It was at this point that we were contacted by Congressman Condit asking for suggestions for the "Corrections Calendar." We immediately responded affirmatively, and what resulted was HR 2567, the Constructed Water Conveyance Reform Act of 1995. In reality, this is a very simple piece of legislation. The bill makes it clear that the Clean Water Act does not *require*

states to regulate water in constructed conveyance facilities. The idea came from visits to other states which have taken the position that these facilities need not be regulated. It was reinforced by visits to U.S. EPA headquarters in Washington, D.C. where the net result of our meetings was that the agency had no desire to regulate these waters. Not only could we not find anyone advocating the position being imposed in California, we were unable to find anyone who even thought it was a good idea.

Once HR 2567 was introduced, however, the agency began to sing a different song. In what appeared to be a closing of the ranks in support of Region IX, U.S. EPA immediately made it known that our efforts with Congressman Condit were not appreciated. Region IX staff made it clear that the "cooperation" we had seen by their agency up to this point would be difficult to continue in light of the legislation. Region IX "suggested" we contact Congressman Condit with U.S. EPA proposed amendments.

Having failed in its endeavor to press these amendments through CRIA, the agency then turned its attention to the legislative process itself. U.S. EPA offered a series of amendments (all previously presented to CRIA by Region IX) which it claimed were necessary to remove its opposition to HR 2567. The nature of the amendments (some of which were accepted) in general demonstrated an ongoing puzzling attitude by U.S. EPA relative to Clean Water Act reform. The proposals are summarized below:

1. U.S. EPA Suggestion: Limit application of the bill to the "arid west."
   Response: We believe the unreasonable regulation of constructed conveyance facilities intended to be addressed by HR 2567 has to do with the nature of the waterway, not its geographical location. Treating an agricultural ditch in the same fashion as the most pristine mountain stream is as inappropriate in Indiana as it is in Arizona.
2. U.S. EPA Suggestion: Limit the application of the bill to "agricultural conveyances."

Response: Here too, U.S. EPA misses the point. It is the fact that the ditch is not presently and never was a natural waterway, not the ultimate use of the water in it, that makes Clean Water Act regulation inappropriate. It must also be noted that practically, the distinction suggested by U.S. EPA is impossible. As the staff of Region IX well know, many constructed conveyances in California carry water used for both agricultural and municipal purposes. It is unclear how U.S. EPA intends to classify these dual-purpose facilities.

3. U.S. EPA Suggestion: Limit the application of the bill to conveyances that did not previously support wildlife.

Response: At the outset, the question must be asked whether this means any wildlife, ever? Clearly, this has the ability to wipe out any relief from the current unreasonable regulatory scheme. The bill only applies to waterways that are not now and never have been natural waterways. Accordingly, the only wildlife that could be supported is that resulting from the construction of the facility. Since the bill is limited to these waterways, the suggested change is not necessary and would eliminate any potential reform.

4. U.S. EPA Suggestion: Change the standard under which states will be allowed to avoid regulating for uses that do not presently exist.

Response: HR 2567 includes a provision clarifying that states choosing to regulate constructed conveyances need not regulate to protect uses which do not exist, are not reasonably foreseeable to exist, or where such regulation would interfere with the intended use of the constructed facility. U.S. EPA would change this to require state regulation unless the state could prove the uses are not existing or reasonably foreseeable *and* such regulation would *unreasonably* interfere with the purposes for which the system was constructed.

U.S. EPA's suggestion would require states to regulate for uses which do not exist, making this provision more stringent and unreasonable than existing law. Currently, if a use does not exist, the state need not regulate to protect it. Under the U.S. EPA proposal, a state would not only be required to demonstrate that the use does not exist, but also that regulation to protect the non-existent use would unreasonably interfere with the authorized purpose of the constructed facility. This can hardly be characterized as reform.

EPA's preferences--if we understand them--would impose a massive and unfunded workload on the states. For example, there are more than 6,400 constructed conveyances in the Central Valley of California with a combined length in excess of 20,000 miles. Obviously, a requirement that California play water quality cop throughout the entirety of this extensive system, would impose an enormous burden for little or no environmental gain. We might add that California already has the most extensive water quality control effort of any of the states, although rightfully focused on natural waterways.

In sum, HR 2567 does nothing more than allow states the flexibility to focus their water quality resources on truly natural waterways. U.S. EPA claims this flexibility exists, but the states either think the mechanism to get flexibility is too expensive and/or unachievable, or so vague as to be meaningless. The reforms set forth in HR 2567 will free the states from creating a whole new regulatory structure to regulate constructed conveyances, except to the extent necessary to ensure these waterways do not adversely impact the natural waters to which they flow.

U.S. EPA's reaction to the bill indicates that despite Congressional intent that Clean Water Act regulations apply only to "navigable waters," the agency believes anything that is now or has ever been wet is fair game. The agency's inability or unwillingness to clearly define what waterways it believes are included as a "water of the U.S." and which are not.keeps everyone guessing

and unreasonably interferes with state water quality policy. This costs industry and taxpayers money, not to mention making federal guidelines seem arbitrary and subject to the whims of federal agency staff. Which, by the way, varies greatly between EPA offices.

We believe this stands as eloquent testimony to the need for regulatory reform.

Ms. CORDOVA. Thank you for having us here.

I actually serve in two roles. I am a board member of the Sand Creek Flood Control District, and I am also a landowner and a farmer in our district. I am here to testify about problems that our district has faced and will continue to face and incur unless there are significant reforms.

The Flood Control District was purposely created in June 1987, to prevent flooding which occurs during heavy winter or spring rains. Restrictive vegetation and increasing amounts of sediment affect the efficient flow of the water in the Sand Creek channel. Private property owners suffer crop losses and there is flooding in several homes. In addition, there is a monumental public safety hazard when roads are inundated with water. It is important to emphasize that Sand Creek is unnavigable, non-recreational and is simply an intermittent stream which serves as an agricultural drain for private property owners. Sand Creek is not the Tuolumne River, it is not a tributary of any river system. It is simply runoff water which eventually discharges into a non-jurisdictional waterway which happens to be a concrete-lined Turlock Irrigation District main canal.

March 1994, our Board and our District were absolutely incredulous when we were told that permits were necessary for the routine maintenance and clearing of the drainage. Historically, Turlock Irrigation District had maintained the lower flood plain as an improvement district and Stanislaus County Flood Control Enabling Act provided for the creation and operation of local flood control districts and granted powers to those districts to protect persons and property from flood.

The Army Corps of Engineers claims jurisdiction over the natural drainages and altered portions of Sand Creek. Therefore, we were informed to comply with the Clean Water Act, Section 404, and obtain the necessary permits. Our district applied for permits to be in compliance. The process proved to be both lengthy and frustrating.

For example, we communicated by phone, by telephone, in person with several individuals and agencies about the why and how of compliance. The written testimony that we have provided contains a comprehensive list of local, State and Federal agencies that we have worked with. In fact, I brought the packet of all the paperwork, and this does not include phone calls and personal contacts as well.

The Corps required a wetlands delineation report to ensure no endangered species. Our District retained a wetlands consultant to comply with that requirement at the cost of $3,000 to our small District which only generates a $3,200 yearly operational budget. We were told at a pre-application meeting with the Corps that our mitigation costs would be too high, but we were never told what the figure was or what we had to mitigate.

Even though the USDA flood prevention study and the wetlands delineation both found no endangered species, the Fish and Wildlife questioned perhaps that there may be a tiger salamander in our drainage. The Corps discouraged us from seeking a permit because of the lengthy process and scrutinization by several agencies, including Fish and Wildlife, EPA, Fish and Game, Water Quality

Board and the historic site register. Obtaining the permit would have been nearly impossible if it would not have been for the major flood March 1995.

For Stanislaus County, State permits and certifications were waived due to the suspension of the State endangered species act. Congressman Condit's efforts and others who communicated with the Army Corps of Engineers to expedite the processing of the 404 permit which was finally secured 18 months after first learning that Sand Creek was determined by the Corps to be "waters of the United States."

Sand Creek Flood Control District has dealt first-hand with over-regulation of existing laws. We implore Congress to implement reforms that reflect common sense, private property rights, safety and protection of agricultural pursuits.

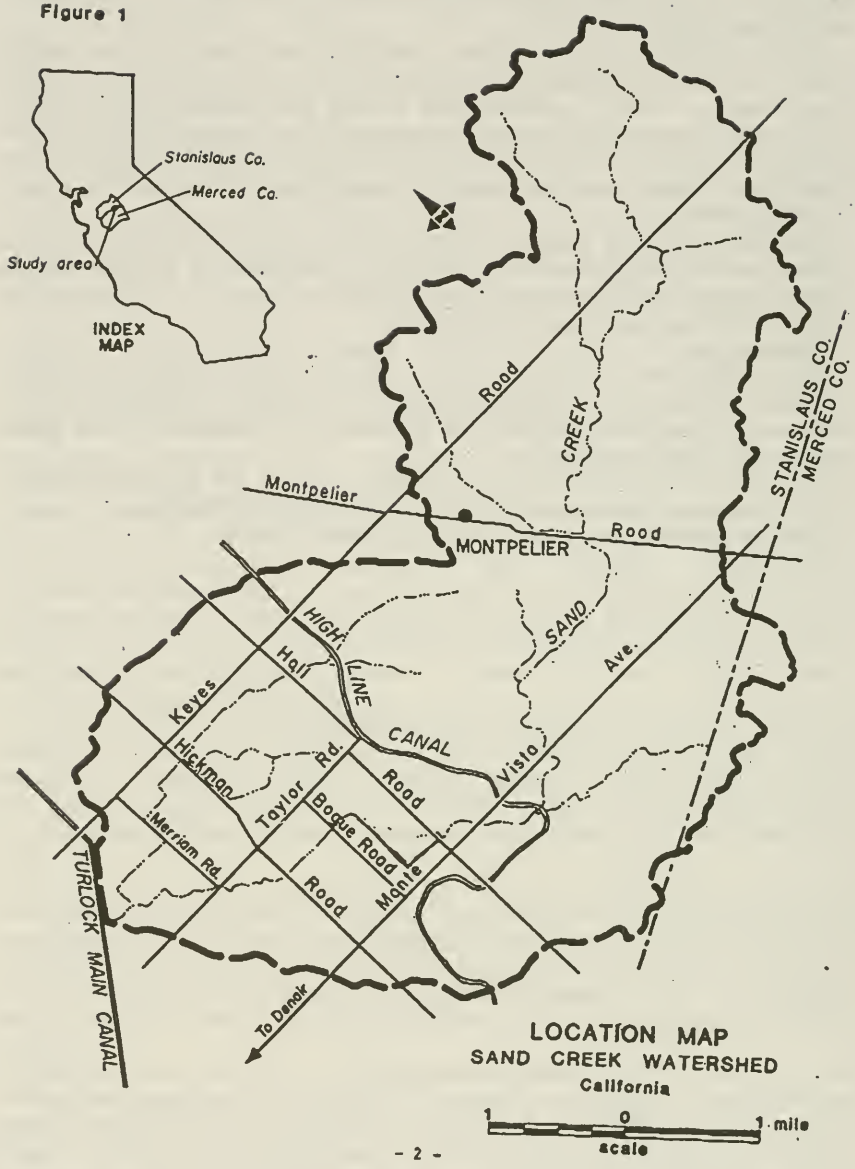
Thank you.

Mr. McINTOSH. Thank you very much. Having dealt with the wetlands issues for a long time now, I am very sympathetic with your argument on that and look forward to talking with you more in our questioning period.

Our next witness is Mr. Dan Nelson, who is the executive director of San Luis Delta Mendota Water Authority. Welcome.

[The prepared statement of Ms. Cordova follows:]

Figure 1


Stanislaus Co.
Merced Co.
Study area
INDEX MAP
Road
CREEK
STANISLAUS CO.
MERCED CO.
Montpelier
MONTPELIER
Road
HIGH LINE CANAL
SAND
Ave.
Hall
Keyes
Hickman
Rd.
Road
Visio
Taylor
Bogue Road
Merriam Rd.
Road
Monte
TURLOCK MAIN CANAL
To Denair
LOCATION MAP
SAND CREEK WATERSHED
California
1
0
1 mile
scale

SAND CREEK FLOOD CONTROL DISTRICT
Stanislaus County, California

Sand Creek watershed is located in eastern Stanislaus County. The District encompasses approximately 11,800 privately-owned acres. The 132 assessed parcels are predominantly orchards, vineyards, permanent pasture and field crops. The individual property owners own Sand Creek whose course runs across their respective agricultural properties.

Senate Bill 495, Chapter 421, established the Stanislaus County Flood Control Enabling Act in 1981. The Act provided for the creation and operation of local flood control districts and granted powers to protect land, property and persons from flood damage.

A formal study was conducted in 1986 by the U.S. Department of Agriculture, River Basin Planning Staff. The "Sand Creek Flood Prevention Study" indicated that, "According to the U.S. Fish and Wildlife Service, there are no known threatened or endangered species in the project area." Subsequently, Stanislaus County Local Agency Formation Commission (LAFCO) approved the formation of Sand Creek Flood Control District (SCFCD) June, 1987, noting that "approval of the proposal will not have significant effect on the environment."

The SCFCD board of directors implemented the option of routine maintenance of the creek channel in order to prevent loss of or damage to private property and to county property such as roads. Prior to the formation of SCFCD, Turlock Irrigation District (TID) had the responsibility of maintaining the drainage. The SCFCD board members are elected by the Stanislaus County Board of Supervisors and serve without compensation or support staff.

Direct assessment on the tax rolls for District property owners was implemented in order to fund the maintenance projects. The current assessment rate is $0.23/acre for the upper watershed and $0.40/acre for the lower watershed. The assessment generates approximately $3,200/year for the operational budget. TID has been historically retained by the flood control district to perform the maintenance activities with appropriate labor and equipment.

Prior to March, 1994, routine maintenance of Sand Creek was accomplished each year in order to remove debris and excessive vegetation or sediment which created flooding problems on County roads and private property. Property owners in the lower flood plain (between Hall Road and the point of discharge (TID Main Canal) receive the brunt of excessive water due to restricted flow of water. There have been crop losses and several homes have been flooded during each major storm. In addition, there is a monumental public safety hazard when County roads are inundated with water.

March, 1994, marked the end of maintaining the agricultural drainage (Sand Creek) as it had been accomplished in the past. The District was told by various individuals and agencies that we would not be able to continue the same types of cleaning and clearing activities without

4

permits and certifications from the appropriate federal and state agencies.

Sand Creek is an unnavigable, nonrecreational, intermittent stream which discharges into a nonjurisdictional waterway (concrete-lined TID Main Canal). The U.S. Army Corps of Engineers claims jurisdiction over the natural drainages and altered portions of Sand Creek. The SCFCD understands that manmade drainages which inlet into the main channel are exempt from Army Corps jurisdiction.

The Sand Creek channel carries winter/spring rainwater and minimal amounts of summer irrigation tailwater. Yet these waters have been determined by the Corps to be "waters of the United States." SCFCD has been notified to comply with the Clean Water Act, Section 404, in order to obtain the appropriate permit(s).

Due to the floods of 1995 and the declaration of a federal disaster in Stanislaus County, the usual requirement of obtaining the following permits and certifications was waived for our flood control district:

(1) Stream Bed Alteration Permit, California State Department of Fish and Game
(2) Water Quality certification, California Regional Water Quality Control Board, and
(3) Historic Site certification, National Register of Historic Places.

A wetlands delineation was required and the biological/wetlands consultant retained for the delineation found tulee, wild blackberry bushes, Johnson Grass, water primrose, water cress and willows. The consultant found no evidence of the Elderberry Shrub and therefore no habitat for the federally listed Valley Elderberry Longhorn Beetle. The Public Notice issued by the U.S. Army Corps of Engineers for our project was issued June 2, 1995, and was scrutinized by U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency and California Native Plant Society.

In order to expedite and amicably resolve the District's dilemma, the SCFCD Board worked diligently and arduously and finally secured the 404 permit August 30, 1995. In summary, the District has communicated by telephone, letter or in person with various county, state and federal agencies and individuals. Obtaining the necessary permit would have been nearly impossible if it had not been for the March, 1995, storm which created a federal disaster for Stanislaus County. The event prompted suspension of the state Endangered Species Act and created new attention to the County's flooding problems.

Communication during the lengthy, frustrating process included the following individuals and/or agencies:

Michael Krausnick, County Counsel, Stanislaus County
Andy Eshoo, Deputy County Counsel, Stanislaus County
Harold Callahan, Public Works Director, retired, Stanislaus County

George Stillman, Public Works Director, Stanislaus County
Fran Sutton-Berardi, Senior Planner, Local Agency Formation Commission, Stanislaus County
Supervisor Tom Mayfield, Stanislaus County, District 2
Assemblyman Sal Canella's office
Senator Dick Monteith's office
Dee Dee Moosekian, legal counsel for Congressman Gary Condit
Congressman Gary Condit
Michael McElhiney, District Conservationist for Natural Resource Conservation Service, Modesto
Dale Mitchell, California Department of Fish and Game, Fresno
Susan Sparks, California Regional Water Quality Control Board, Sacramento
Carolyn Richardson, Environmental Attorney, California Farm Bureau Federation, Sacramento
Gene Hirsch, Office of Emergency Services, Sacramento
Ed Martin, Federal Emergency Management Agency, Sacramento
Mike Friz, U.S. Department of Fish and Wildlife, Sacramento
June DeWeese, U.S. Department of Fish and Wildlife, Sacramento
Tom Coe, Art Champ, Tom Cavanaugh, Karen Shaffer, U.S. Army Corps of Engineers, Sacramento
Michael Skenfield, Biological/Wetlands consultant, Wetlands Delineation report
Turlock Irrigation District, board member, engineers, management

Sand Creek Flood Control District has dealt firsthand with overregulation of existing laws. We implore Congress to implement reforms that reflect common sense, private property rights and protection of agricultural pursuits.

Prepared March 25, 1996

CHAPTER 4. POWERS AND DUTIES OF A DISTRICT

Article 1. Introductory Provisions

SEC. 300. The board of directors is the governing body of a local district, and the powers of a local district enumerated in this act shall, except as otherwise provided, be exercised by the board of directors.

SEC. 301. The board of directors shall exercise general supervision and complete control over the construction, maintenance, and operation of all works and projects of a local district, and generally over the affairs of the local district.

Article 2. General Powers and Duties

SEC. 310. The object and duties of a local district are to provide for the control of the flood, storm, and drainage waters of the district and the flood, storm, and drainage waters that have their source outside of the district, but which waters flow into the district, to the end of protecting the land, property, and persons within the district from damage from those waters.

SEC. 311. A local district may do all things necessary or convenient for accomplishing the purposes for which it is formed.

SEC. 312. Without limiting the provisions of Section 311, a local district may:

(a) Deepen, widen, or reroute stream channels.

(b) Remove debris and vegetation.

(c) Clear vegetation.

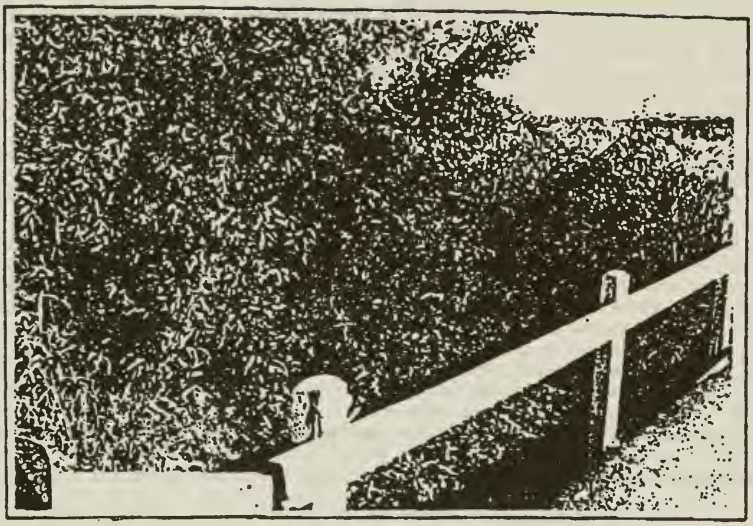
(d) Construct levees, weirs, embankments, canals, ditches, or pumping systems.

(e) Conduct studies, investigations, or planning for such works.

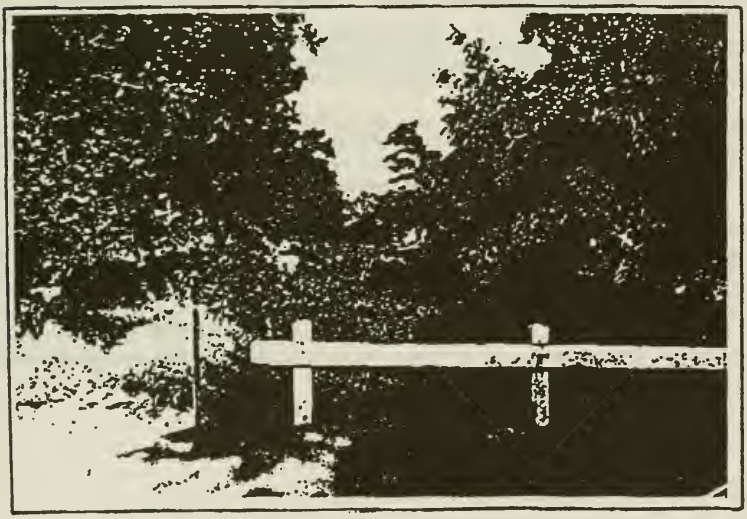
(f) Do any other work necessary or convenient for the control of flood, storm or drainage waters.

SEC. 313. A local district may sue and be sued.

SEC. 314. A local district may, by ordinance, adopt rules deemed necessary and proper for carrying out the provisions of this act, including, but not limited to, rules



View of Sand Creek downstream from Hall Road.
Improperly managed riparian vegetation will restrict flows.



View of Sand Creek downstream from Bogue Road.
Good vegetation protects banks and helps maintain wildlife habitat. Excess vegetation and silt build up limits channel capacity.

orn for silage, oat hay, alfalfa hay, and a forage mix consisting of oats, wheat, barley, and vetch are the major row and field crops. Major orchard crops are apples, nectarines, peaches, walnuts, pistachios and almonds in the lower watershed, and almonds in the upper area.

Most of the pastureland is grazed from March to December. Double-cropping, with winter plantings of grain, occurs on most of the cropland. On a typical farm, corn for silage or grain is grown from April to September; forage mix or oat hay is planted in November and harvested the following April. The field crops are usually disked between rotations. Most of the disking appears to be a form of conservation tillage. Remaining crop residues reduce potential runoff that may occur when early rains come before the new planting is well established.

Fish, Wildlife and Wetlands: Fish and wildlife habitat in the area above the Highline Canal is limited to grassed waterways through orchards, vineyards and cropland. There is little opportunity for habitat improvement.

Below the Highline Canal, there presently exist approximately 15 acres of wetland habitat along Sand Creek. Most of the wetlands are the result of pasture or crop irrigation runoff. Some mature willows and cottonwood trees, along with tule and cattail clumps, are found between Hickman Road and the Turlock Main Canal. These areas are being used by muskrats, frogs, nesting mallards, pheasants, raptors, and a variety of songbirds. Mosquito fish, an effective biological control for mosquito populations, are found in the creek and associated ditches. Because of the intensive agricultural land use in the area, ie wetlands and associated riparian vegetation are extremely valuable habitat ror both game and nongame birds--important to the natural control of rodent and insect populations. The present intensity of wetland use by both game and nongame wildlife underscores their importance in agricultural areas.

✶ Endangered and Threatened Species: According to the U.S. Fish and Wildlife Service, there are no known threatened or endangered species in the project area, although there is a possibility that the study area may contain the San Joaquin Kit Fox and the Blunt-nosed Leopard Lizard. Initial reconnaissance produced no tracks, dens, sign or typical habitat of either species.

Several candidate species may occur in the project area. The most likely is the Giant Garter Snake (Thamnophis couchi gigas), an aquatic species which feeds largely on fish, frogs, mice and other small vertebrates.

Nine plant species presently being considered for listing as threatened or endangered may be present in the study area. A more intensive search for these plants will be made, should they be formally proposed for listing.

Ongoing Programs: Presently, ongoing programs provided under SCS technical assistance and Agricultural Conservation Program (ACP) cost sharing fall significantly short in meeting land treatment needs and reducing the problems occurring in the study area within a reasonable time frame.

ASCS presently cost shares in Stanislaus County on cover crop installation but t on grassed waterways. The cost-share rate is 50 percent or a maximum of ,,500. The 1986 ACP cost-sharing allocation for Stanislaus County is $21,796.

"Sand Creek Flood Prevention Study"
1021

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STANISLAUS COUNTY LOCAL AGENCY
FORMATION COMMISSION

RESOLUTION

DATE: June 17, 1987 NO. 87-20

SUBJECT: Formation of the Sand Creek Flood Control District

On motion of Commissioner , seconded by Commissioner , and approved by the following:
Ayes: Commissioners:
Noes: Commissioners:
Absent: Commissioners:
Disqualified: Commissioners:
Abstaining: Commissioners:
Ineligible: Commissioners:

THE FOLLOWING RESOLUTION WAS ADOPTED:

WHEREAS, the Commission has conducted a public hearing on the proposed Formation of the Sand Creek Flood Control District;

WHEREAS, notice of the said public hearing was given pursuant to Section 56834 et. seq. of the California Government Code and Commission Policy; and

WHEREAS, the Commission has, in evaluating the proposal, considered the report submitted by the Executive Officer and the factors set forth in Section 56841 of the California Government Code;

NOW, THEREFORE, BE IT RESOLVED that the Commission:

1. Certifies it has considered the contents of the Environmental Review Initial Study and the Negative Declaration prepared for the proposed district;

2. Finds that the approval of the proposal will not have a significant effect on the environment;

3. Orders the Notice of Determination to be filed;

4. Finds that: (a) the land involved in the proposal consists entirely of agricultural preserves and is devoted to agricultural land uses and zoned for agricultural purposes; (b) the approval of the proposed district will not adversely affect the agricultural preserves or the agricultural land uses; (c) the territory involved in the proposal is inhabited; (d) the proposal would not conflict with any adopted spheres of influence; (e) there is a need for the service which would be provided by the district;

TURLOCK IRRIGATION DISTRICT
333 EAST CANAL DRIVE
POST OFFICE BOX 949
TURLOCK, CALIFORNIA 95381
(209) 883-8300

Don Pedro Dam and Powerhouse

July 26, 1994

Norma Cordova
3824 Montpelier Road
Denair, CA 95316

Reference: Request for Information - Sand Creek Maintenance

Dear Norma:

Pursuant to your request for maintenance information on Sand Creek, we have prepared the following information for your use:

Since 1955, the TID has cleaned the Dallas Drain Improvement District Drain on an "as needed" basis as requested by the Dallas Drain Improvement District. Additionally, the District has been retained by the SCRCD to periodically clean sections of the Sand Creek drainage channel.

The cleaning operations included removing the vegetation below the water line. Normally no earth was removed except occasionally to remove silt build up and then only to the approximate natural grade of the bottom of the drain.

In recent years, excavators were used to perform the cleaning; previously drag lines were used.

If you have additional questions concerning maintenance, please feel free to call Richard Larson at 883-8391.

Sincerely,

TURLOCK IRRIGATION DISTRICT

H. B Blazzard

Howard B. (Ben) Blazzard
Civil Engineering Technician

HBB:dp:cordova.let

xc: Brent Harrison
Richard Larson

TID

FM GS0910-02

Recd 11-4-94
"

Stanislaus County
Department of Public Works

1100 H STREET
MODESTO, CALIFORNIA 95354

• ADMINISTRATIVE DIVISION (209) 525-6550
• ENGINEERING DIVISION (209) 525-6552
BUILDING INSPECTION (209) 525-6557
TRANSIT OPERATION (209) 525-6552
ROAD DIVISION (209) 525-4130
SANITARY LANDFILL (209) 837-4600
EQUIPMENT DIVISION (209) 525-4145
BUILDING MAINTENANCE (209) 525-4108
• FAX (209) 525-6507

November 3, 1994

Corps of Engineers
Department of the Army
650 Capitol Mall
Sacramento, CA 95814

Gentlemen:

SUBJECT: Sand Creek Flood Control District – Permit to Clear Vegetation

For your information, the Sand Creek Flood Control District was formed primarily for a systematic way to accomplish the minor work detailed in the District's permit.

The District has on file several studies which were made in cooperation with the U.S. Department of Agriculture - Soil Conservation Service for the specific purpose of identifying the need to do the work as outlined. Substantial flood damage to property and flood hazards to roadway areas are documented in these studies.

It is hoped that the Corps of Engineers will understand the District's dilemma in this matter. The District was formed so that sufficient funds would be available to them to perform the minor work involved. Should the Corps deny the permit or make the requirements and studies so costly as to restrict the District's ability to comply, then their mission will not be accomplished and their very existence could be severely jeopardized because of possible exposure to liability.

While this may be a small, insignificant project in the eyes of the Corps, it is very important to the landowners involved. It is highly probable that this small ditch was primarily man-made to carry irrigation tailwater when the use of portions of the land were changed from grazing or dry farming to irrigated orchards some years ago. I have heard that where the ditch is located now was really a swale area in the past. Therefore, you may really be applying all of your requirements to something much less than what the regulations were meant for.

Any consideration which you can give this small District will be very much appreciated by Stanislaus County.

Very truly yours,

H. R. CALLAHAN, Director

HRC:sp
(I:/Services/SandCrek.Cal)

MICHAEL W. SKENFIELD
BIOLOGICAL CONSULTANT
Registered Professional Forester No. 1597
Registered Environmental Assessor No. 00057
P.O. Box 747 Murphys CA 95247

July 17, 1995

Sand Creek Flood Control District
Attn: Norma Cordova
3824 Montpelier Road
Denair CA 95316

Re: June 22, 1995, letter from U.S. Fish and Wildlife Service;
Subject: PN 199400228

Dear Mrs. Cordova:

During my wetlands delineation of Sand Creek (my report of August, 1994) I found no Sambucus sp. (Elderberry) shrubs along the banks which are planned for impact.

Since there are no Elderberry shrubs within your proposed project, **there is no habitat for the federally listed valley elderberry longhorn beetle (Desmocerus californicus dimorphus).**

Sincerely,

Michael W. Skenfield

Wetlands Consultant listed with Sacramento District, USACE

Mr. NELSON. Thank you.

Thank you, Mr. Chairman and Congressman Condit, for this opportunity and thank you for having this hearing in the heart of the San Joaquin Valley.

Our Authority represents 31 districts, predominantly agriculture, on the west side of the San Joaquin Valley. I cannot imagine anyone or any area that has been more impacted by Federal regulations other than possibly the timber industry, than the ag lands in our area.

Over the past several years, these agricultural folks have been subjected to layers of Federal regulation through the statutes of the Central Valley Project Improvement Act passage in 1992, the listing of the winter run salmon and delta smelt under the Endangered Species Act—they pretty much happened between 1991 and 1994—and also the Bay-Delta Clean Water Standards under the Clean Water Act. Not only have they been subjected to the layers of statutes but also the layers of bureaucracy in the implementation of these statutes.

We have no less than five Federal agencies currently trying to implement California water policy and Federal water policy in the State, including the Bureau of Reclamation, Fish and Wildlife, National Marine Fisheries Service, the Environmental Protection Agency and the Corps of Engineers. The implementation chaos peaked in 1993 when you literally had field level biologists within the National Marine Fisheries Service and the Fish and Wildlife, literally dictating the operations of both the State and the Federal projects.

This has gotten a little better since the water user-initiated Bay-Delta Accord that tried to umbrella a lot of these statutes and tried to make better sense out the way that these statutes were being implemented. But there are still examples of renegade Federal regulators wanting to use these statutes as tools to extract more from the water users.

Impacts: The Federal regulations have cost our water agencies about 500,000 to 600,000 acre feet in an average year. For example, that is enough water to meet the annual water needs of over one half million five-person families. That is also enough water to produce over 20 million average servings of tomatoes. The direct impacts from significant water losses have indirect impacts on businesses, jobs and economic activity throughout the region and the State of California.

Land values: We have seen over the last 5 years, a reduction in values conservatively speaking of about $1,000 per acre that can be directly attributable to Federal regulations on our water. Over the million acres or so where it is implemented, that is $1 billion in equity that this region has lost almost overnight as a result of Federal regulations. And that is in rural communities that are having high unemployment as a way of life on an ongoing basis.

There has recently been a report that I would like to refer you to that has just come out by the California Institute for Rural Studies. It is called 93640 at Risk and that is about the city of Mendota. Generally, it spells out real clearly about the impacts on the rural communities in the west side of the San Joaquin Valley.

In closing, I think our goals are not in conflict here. I think we all want and need to find reasonable and equitable ways of balancing our environmental needs and our economic impacts. Unfortunately we do have some flawed Federal statutes and some flawed processes for implementing these statutes. We do need regulatory relief, but in addition to changing some of these statutes, we also need a new attitude in our Federal agencies in implementing these statutes to develop better partnerships with State, local and communities.

Thank you very much.

Mr. MCINTOSH. Thank you, I appreciate that. In our questioning, I would like to come back to that report about Mendota and ask you for a few more details on that. So thank you very much for your testimony there.

Our final witness on this panel is Mr. Allen Short, who is the general manager of the Modesto Irrigation District. Thank you for coming.

[The prepared statement of Mr. Nelson follows:]

U.S. House of Representative
Government Reform Committee and Oversight Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs

Statement presented by

Daniel G. Nelson, Executive Director
San Luis & Delta-Mendota Water Authority
April 1, 1996
Modesto, California

Members of the committee: I am Daniel Nelson, Executive Director of the San Luis & Delta-Mendota Water Authority, which represents 31 water districts covering portions of Kings, Fresno, Merced, Stanislaus and Santa Clara counties. The Authority represents agricultural, municipal and industrial, and wildlife refuge and environmental water users in a two-million-acre region. Our water agencies have individual contracts with the U.S. Bureau of Reclamation for the collective delivery of over 2.8 million acre-feet of water from the Central Valley Project (CVP). We appreciate the opportunity to provide input on how federal regulations have impacted our diverse area.

Few, if any, industries have been impacted by federal regulations as much as the water industry. We can't overstate the significance of changes that have occurred in our region resulting from inconsistent and unbalanced implementation of federal laws. These actions have left our water customers with continued reductions in water supply and increased water rates -- costly impacts to farmers and businesses, and ultimately, to you and me as consumers and taxpayers.

In fact, federal regulations cost our water agencies about 500,000 to 600,000 acre-feet in an average year. For example, that's enough water to meet the annual water needs of over one-half million, five-person families. (A family of five uses about one acre-foot of water per year for all of its domestic needs, including landscaping and washing cars.) That's also enough water to produce over 20 million average servings of tomatoes. The direct impacts from significant water losses have

41-532 97 - 3

indirect impacts on businesses, jobs, and economic activity throughout the region and the state of California.

Some of our member agencies have seen reductions ranging from 25 percent to 50 percent -- resulting during non-drought conditions, in large part, from federal regulations. These regulations include the Central Valley Project Improvement Act (CVPIA), Endangered Species Act (ESA), Clean Water Act and Bay-Delta water quality standards. Not only have all of these provisions taken water away from our customers, they have removed the assurances of having a reliable, long-term water supply. More background information is provided in the attached White Paper, "Seeing the Forest for the Trees."

Federal water contractors must also contend with uncertainty and burdensome implementation of the Reclamation Reform Act of 1982. Let's take a specific look at these burdens:

CVPIA

The CVPIA is a poorly written, ambiguous law that called for major changes in operation of the federal CVP water delivery system. The CVPIA directly reallocated over 800,000 acre-feet of CVP water for environmental purposes, and required that water users pay $50 million a year into an environmental restoration fund. Our supply also has been impacted by the CVPIA's provision that calls for instream releases of 340,000 acre-feet per year for fish restoration and maintenance on the Trinity River, and increased supplies of about 250,000 acre-feet for refuges. In reality, the 800,000 acre-feet designated for fish and wildlife purposes by the CVPIA has come only from 2.5 million acre-feet contracted to agricultural water service contractors in the Tehama Colusa and Delta Division service areas -- not from the total CVP yield of some seven million acre-feet.

Specifically, the CVPIA's 800,000 acre-feet requirement for environmental improvements takes water away from water contractors south of the Delta -- us. While no regulations have yet been

promulgated, implementation actions by the Department of Interior, have caused water reductions beginning in 1993. Yet, still today, we have no accounting of where this water is going and how it has improved the Delta estuary -- if, in fact, it has.

The CVPIA also mandates tiered-pricing provisions, and places penalties on water contracts with longer remaining terms and erodes the certainty of renewal of long-term water contracts, all of which can have dramatic financial impacts to farms and farm communities.

Endangered Species Act

Federal actions to protect the winter-run Chinook salmon and Delta smelt under the ESA also serve to reduce the available CVP water supply and severely curtail pumping water south of the Delta. Specifically, the biological opinions issued by the National Marine Fisheries Service require the CVP to hold large amounts of water in Shasta Reservoir in order to help control water temperature for salmon spawning, and diversions in the Delta are cut back as well, limiting the amount of water available for human uses.

Clean Water Act -- Bay-Delta Water Quality Standards

The U.S. Environmental Protection Agency proposed its version of Bay-Delta water quality standards in 1993, based on its interpretation of the Clean Water Act. The EPA's plan would have required from two to three million acre-feet of additional water from the CVP and state water project to be discharged through the Delta and Bay.

The EPA did not have the authority to implement its plan, which would have been disastrous for our water users. The State Water Resources Control Board had implementation responsibility, and the issue was temporarily resolved by the historic December 15, 1994, Bay-Delta Accord. Through the Accord, state and federal agencies and stakeholder groups reached consensus on a plan

of water commitments required and water quality standards to be met during the Accord's 3-year term. This Accord reduced our water supply to some extent, but far less than EPA had proposed. Beyond that term of the Accord, the impacts of implementing the Clean Water Act in the Bay-Delta Estuary are uncertain.

In addition, the Inland Surface Water Plan being developed by the State in order to implement the Clean Water Act will have huge adverse impacts on the state's agricultural water users if the EPA requires that the Act be used to impose stringent water quality objectives even in agriculturally-dominated natural channels or in constructed delivery channels and drains.

Reclamation Reform Act of 1982

The Reclamation Reform Act of 1982 (RRA), administered by the Bureau of Reclamation, imposed significant costs on farmers by increasing water pricing and changing eligibility rules.

Regulations implementing the RRA have created a steady stream of mandatory paperwork in the required filing of forms, annually or more frequently in many cases, at a significant cost to farmers and water districts in time and money. Several major misfires in implementation also have occurred, including now-abandoned efforts to collect unauthorized "conversion" penalties for forms violations -- whether minor or serious in nature -- and the expenditure of over $5 million on an Environmental Impact Study which was shelved because of a change in administration. A new EIS has now been done, and some revisions to the regulations are expected.

These events continue to impact the regulated parties directly, as expenditures of time, funds and effort are required to respond to changed, inequitable or unauthorized approaches and indirectly by creating instability in the program and a persistent atmosphere of mistrust of the federal government.

Impacts of Unbalanced Implementation

Not only are these excessive regulations restricting our water availability and long-term certainty, equally as frustrating are the methods and ways these regulations are implemented.

For example, these supply-related regulations have resulted in disproportionate impacts on our water users. Certain water users -- those in our Authority – are giving up more than they should. This water year serves as a prime example. While the rest of the CVP and state water contractors are receiving a full supply, the Authority's agricultural water service member-districts are getting a 80 percent supply. The reason -- decisions urged by field-level federal employees to hold over 100,000 acre-feet in the Delta to implement fish-doubling provisions of a *draft* plan developed under the CVPIA, despite federal agencies' commitment in the Bay-Delta Accord not to harm contractors by commiting more water to the Delta than the Accord requires.

That leads to another problem. Implementation of many of these federal regulations are driven from the "bottom - up." Specifically, field level employees of agencies like Fish and Wildlife Service focus on narrow issues, such as protection of a particular specie. As seen with implementation of the Delta smelt protections in the ESA, these field level employees insist on the need for implementing operational changes favorable to their narrow interests without looking at the broader picture and considering all of the competing interests. All to often, policy makers are reluctant to second guess these "experts" to make balanced implementation decisions. Flaws in the language of CVPIA and ESA allow this to occur, leaving impacted parties with little opportunity for relief.

This "bottom-up" approach also has caused water transfers to become bogged-down in bureaucracy. Instead of being advanced by CVPIA, many transfers were stopped by elaborate and slow processes for approval developed by low-level bureaucrats.

In addition, there can be conflicting regulations among federal agencies. Prior to the signing of the historic Bay-Delta Accord in 1994, many agencies had authority over CVP operations including National Marine Fisheries Service, EPA, Army Corps of Engineers, Bureau of Reclamation and Fish and Wildlife Service. Although some improvements in coordination have occurred through the Accord, more improvements can, and should be made.

Another problem with implementation of federal regulations is the "shotgun versus rifle" approach to addressing environmental concerns. Many of the provisions in the CVPIA and ESA take an inflexible, broad-brushed approach to address problems, instead of focusing on flexible, workable, effective fixes. For example, the CVPIA's broad water conservation provisions mandate that all districts should implement specific water conservation provisions, instead of allowing Districts to focus on their resources on those conservation practices that are most effective under local conditions, many of which are already implemented and working.

In closing, there is a need for balanced regulations and consistency in their implementation. There can be balance in meeting the needs of the environment and reducing the adverse impacts to agricultural and urban water contractors. Many of the existing regulations are not balanced, and we are working to correct that.

In the meantime, administrative efforts can help improve coordination among the regulating agencies, and give the needed assurances that our long-term water supply certainties will be addressed. We look forward to working with you to achieve this balance.

SEEING THE FOREST FOR THE TREES

A White Paper on the Factors Behind CVP Water Shortages

BACKGROUND

The past three years have brought significant changes to the manner in which the Central Valley Project is operated. As we work on implementing the CVP Improvement Act, the December 15th Bay/Delta Accord, and the Endangered Species Act, we need to step back and look at the bigger picture.

The fundamental reality is that the CVP is today primarily a project for the benefit of fish and waterfowl. We have been told (and reality proved this out) that any deliveries to Project contractors should be considered incidental to the environmental obligations. This is certainly clear on the west side of both the Sacramento and San Joaquin Valleys.

Just look at our circumstance in early March 1996, when we have the best water conditions in a decade. Carryover storage from 1995 was strong and precipitation has been over 100% of normal. Some reservoirs are full, others have encroached into the flood reservation.

At the same time, customers in significant portions of the CVP are being told to expect no more than a 60% supply. That's almost a 50% cut in deliveries at the critical point when farmers are planting their crops and trying to get financing. Obviously, the significance of the Project obligations for the environment grows exponentially in below normal and dry years.

The purpose of this paper is to remind the reader of the extraordinary obligations now burdening the CVP. Furthermore, it should help in understanding why the following questions are so significant to the CVP community:

1. While there is broad agreement that environmental issues need to be resolved, is the current distribution of the burden, of the responsibility to meet the goal, equitable?

2. Is there a fundamental imbalance between our economic and environmental goals, priorities and actions?

3. Are we making every effort to maximize environmental improvement (solving problems) while also making every effort to minimize the adverse human economic and social impacts?

New CVP Water Supply Commitments:
(Commitments made since 1990)

CVPIA

800,000 a/f Environmental Water
New Level 2 Refuge Supplies, 215,000 a/f
Trinity River

ESA

Winter Run
- Restricted Pumping
- Increased Outflow
- Temperature Control
- Carryover Storage

Bay/Delta
- Restricted Pumping
- Increased Outflow

Delta Smelt
- Restricted Pumping
- Increased Outflow

Other Pending CVP Water Supply Requests / Demands:

- Coordinated Operations Agreement (COA)
- Sacramento River
  - Area of Origin
  - "Paper Water" transfers
  - El Dorado I. D.
- Stanislaus River
  - Stockton East, et al
  - S J River Water Quality
- Folsom Reoperations
- Urban Reliability
- Conservative CVP Operations
  - Instream Flows
  - Carryover Storage
- EBMUD
- Pajaro Valley WD
- Fazio Water
  - San Juan Suburban
  - Folsom
- Other ESA Listing
- Trinity River II

Additional CVP Commitments / Purchase Water:

- Doubling of Fish
- Refuge Supply, Level 4

- On behalf of all its contracting districts, the CVP has taken on the responsibility for Endangered Species, Bay/Delta issues, and CVPIA issues.

- The CVP can not meet its firm contractual commitments & its new "post 90" commitments in all but unusually wet years - resulting in shortages.

- The CVP generally allocates shortages based on water contract shortage provisions. (There are exceptions: CVPIA 800,000 a/f Friant exemption; Administrative M&I 25% impact cap; Administrative Friant ESA & Bay/Delta exclusion; etc.)

<u>This method of implementation results in water delivered to "new CVP commitments" being taken from just the 2.4 million a/f of CVP Ag service contractors.</u>

CVP Firm Contracts (a/f x 1000):

Area	Ag Service	M&I	Refuge Level 2	Water Rights/ Exchange	
Sac River Base Supply				1833.3	
Sac River Project				332.5	
Shasta Division		14.3			
Tehama - Colusa	286.2				
Corning Canal	43.8				
City of Sacramento	9.7			72.0	
Refuges			169.8		
Black Butte Unit	3.0	0.2		0.44	
Trinity Division		40.8			
Contra Costa W. D.		195.0			
American River	20.1	2.9		89.0	
City of Sac				216.5	
EBMUD		150.0			
SMUD		60.0			
PCWA	43.0	74.0		120.0	
New Melones					
Central San Joaquin WCD	39.0				
Tri Dams				650.0	
San Luis Canal	1236.5	16.1		6.0	
Delta-Mendota Canal	475.2	10.2			
Mendota Pool	103.9			882.1	
San Felipe Division	68.6	127.7			
Cross Valley Canal	122.0	6.0			
San Joaquin Refuges			211.7		
Kesterson Mitigation			49.3		
Friant Class 1	758.0				
Friant Class 2	1381.0				
TOTALS:	4590.0	697.2	430.8	4201.84	<u>9919.84</u>
Friant Exemption	(2139.0)				
Net Ag Service	2451.0				

CONCLUSION

The significance of the current environmental demands on the CVP cannot be understated. The potential of further demands on the system significantly reallocating Project supplies must also be examined when trying to see the forest of obligations in the front of the CVP.

If we are inclined to strive for equity and balance in our pursuit of environmental improvement, it seems we should spend a lot more energy in the following areas:

1. Using (and creating more) administrative flexibility in the execution of the environmental obligations so as to minimize the adverse water supply impacts.

2. Distributing broadly the responsibility and obligations to address our environmental objectives.

3. Expanding the overall supply of water in the CVP to assure that current inequitable adverse water supply impact will be reversed.

Mr. SHORT. Thank you, Mr. Chairman, and thank the subcommittee for the opportunity to come before you.

I would like to put a little different spin on what you have heard today because being an irrigation district we cover both water and power, and not only do we cover agricultural, we also cover domestic water service. So what I would like to do today is give you two or three examples across the board that we have run into from the Federal perspective that has caused us problems and what we have done to help mitigate that.

First of all, we just built a surface water treatment facility, it became operational in January of this year. Because of uncertainty of Federal regulation and our ability to be proactive in trying to anticipate what the Federal folks would to do implement new regulatory requirements on our drinking water supply, we included additional processes in the treatment train which ultimately cost us somewhere between $1½ million and $2½ million. That is so that we are ready if water quality regulations get a little bit more stringent. Who is paying for those improvements at this point in time? Obviously, it is the water rate customer who will foot the bill for those types of facilities, and again trying to be proactive.

On the electrical side, I have a couple of interesting stories to talk about. We recently came to an agreement with the Federal Energy Regulatory Commission, if you will, about water flows down the Tuolumne River. Real briefly, the Federal Energy Regulatory Commission does, through a license of Don Pedro dictate how much water for fish flows goes down the river.

We were proactive in the early nineties and thought that it would be best to negotiate an agreement between all the parties, and that being the environmental community, U.S. Fish and Wildlife Service, Cal Fish and Game and the city and county of San Francisco. Unfortunately, we were only able to come to agreement with the Turlock and Modesto Irrigation Districts and Cal Fish and Game. We could not get U.S. Fish and Wildlife Service. Why? They thought it was not enough water, it needed to be more. Cal Fish and Game thought it was OK for the time being, allow it to be implemented to see from that perspective whether we need more or whether we need less.

In our negotiations, we found several interesting comments that surfaced. Part of our problem really is salmon and in recovering the fishery on the Tuolumne River, and part of the problem is predatory fish. When we came up with an idea about getting rid of the predatory fish, because they are non-native, the primary concern is that they are or will become an endangered species and we would have to protect them as well.

From the power side, we just got through installing a transmission line from Phoenix, AZ into California. And as part of that, we were to mitigate desert tortoises. We spent somewhere in the neighborhood of $2 to $2½ million in training folks, conducting classes and mitigating the disruption of the desert tortoise. And one of the issues, as you know, is when you install a power pole or tower, you need to dig into the ground to be able to set the concrete to set the pole pads on top.

We were required within a 10 to 15 minute timeframe after we poured the concrete in the hole to put a netting around the hole—

now mind you, it was filled up with concrete, 2½ feet deep, 6 feet high—so the desert tortoise would not be stuck in the concrete. The project also was shut down at times until the tortoise crossed the road, and finally we were not able to build new roads into some areas because the Bureau of Land Management said no, we do not think this is a good idea and would harm the environment. So we had to fly these poles and all of our equipment in, yet there was a road 100 feet to the north or 100 feet to the south, they simply did not want us to use that.

We have mitigated ducks on our Oregon transmission line. We spend about $3 million a year on an ongoing basis. And we have also contributed to the spotted owl as well and we, on an ongoing basis, spend about $100,000 a year mitigating the spotted owl.

So as you can see, we are impacted by the Endangered Species Act, the Clean Water Act, which has been talked about, and the Safe Drinking Water Act as well.

With that, I will answer any questions and thank you very much again.

[The prepared statement of Mr. Short follows:]

STATEMENT OF ALLEN SHORT, GENERAL MANAGER THE MODESTO IRRIGATION DISTRICT BEFORE THE HOUSE GOVERNMENT REFORM AND OVERSIGHT SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND REGULATORY AFFAIRS

APRIL 1, 1996

Mr. Chairman. Members of the Subcommittee. My name is Allen Short and I am the General Manager of the Modesto Irrigation District (MID). Operations of the MID are governed by a five member board of directors, each of whom is elected to represent a specific geographical area of the District for a four-year term. Originally formed as an irrigation district in 1887, MID has evolved into a multi-purpose utility, supplying farmers with irrigation water, electricity to businesses and residents and domestic water to the greater Modesto area. MID has 211 miles of lined irrigation canals and the 2.0 million acre foot capacity Don Pedro Reservoir and generating facilities owned jointly with Turlock Irrigation District. MID supplies irrigation water to 65,035 acres which support orchards, vineyards, vegetables and numerous field crops. MID has self-financed the construction of all of its facilities except for a portion of the cost of Don Pedro Dam and Reservoir. Both the U. S. Corps of Engineers and the City and County of San Francisco participated in financing Don Pedro.

MID entered the domestic water market in 1995 with the completion of the Modesto Regional Water Treatment Plant. This plant is owned by MID and initially supplied treated surface water to the City of Modesto and the Del Este Water Company for distribution to their end use customers. During 1995, the City of Modesto acquired the Del Este Water Company and is now the sole purchaser of treated water from MID. MID is reimbursed for the cost of owning and operating the domestic water facilities on a non-profit pass-through basis. The treatment facilities were designed for an initial capacity of 30 million gallons per day and will be expanded to an ultimate capacity of 60 million gallons a day.

MID is an independent agency with little, if any, dependency on the federal government; that is, the District does not depend on the government for any subsidies except for the initial Corps of Engineers' contribution for flood control costs on the Tuolumne River. Yet, many of the laws and rules and regulations passed by Congress and/or adopted by federal agencies impact District operations. Following are some examples of the federal laws that have a direct impact on MID.

SAFE DRINKING WATER ACT

Supports the efforts to restore a much needed balance and focus to the SDWA. The Safe Drinking Water Act has significant implications for water suppliers like MID. In its present form, the bill?? (?draft/name) would modify the way the EPA conducts risk assessments and increases the use of cost-benefit analyses

when proposing new regulations. It would also guarantee that all standards would be subject to sound scientific information methodologies.

ENDANGERED SPECIES ACT

The federal Endangered Species Act has caused great concern in California. MID recognizes the need to establish a recovery plan that is based on good science and reasonable targets for the protection of various species. However, there must also be a good plan for delisting species once they have been listed and recovered. Furthermore, the District supports those reform measures that will result in a more balanced approach, again emphasizing sound science and economic risk/benefit assessment. We support the efforts of the Association of California Water Agencies, and others, who are endorsing legislative measures to bring this balanced approach to the Endangered Species Act.

FEDERAL ENERGY REGULATORY COMMISSION

MID, along with many others, recently completed negotiations for increasing minimum instream flows in the lower Tuolumne River in order to protect chinook salmon which spawn in the river. We look forward to FERC's adoption of the negotiated settlement.

STATE WATER RESOURCES CONTROL BOARD

In regard to flows, MID is currently involved in negotiations regarding San Francisco Bay, Sacramento/San Joaquin Estuary issues. The District fully recognizes the importance of the Sacramento/San Joaquin Delta and its role in California's complex water system. We support the urgent need to identify long-

term solutions that will ultimately enable the state to balance the needs of the Delta with those of agriculture and people. These identified solutions must, however, be based on good science and allocation of responsibility, must be based on either negotiated solutions or long held state water rights, area of origin and watershed protection laws.

Mr. Chairman, and members of the Committee, we greatly appreciate the opportunity to present our point of view on these important issues.

Mr. MCINTOSH. Great. Thank you very much, I appreciate that testimony on all of those issues.

I have a couple of questions, in no particular order, and in fact, Mr. Short, I may start with you just because you just recently triggered something. Who ends up paying for the $2 to $2½ million for the desert transmission and the $4 million for the different parts of the endangered species in Oregon? I mean, is that something the company ends up absorbing or how is that dealt with?

Mr. SHORT. Well, we obviously end up paying for it but we certainly pass it along in our rate base to recover the costs that it costs to do business. So the consumer ends up paying for the mitigation activities and the operation of those facilities.

Mr. MCINTOSH. So if you could mitigate in a less expensive manner, you can pass that savings on to your ratepayers.

Mr. SHORT. Absolutely.

Mr. MCINTOSH. And still protect the environment.

Mr. SHORT. Absolutely. Let me add that the District is very environmentally sensitive. We have spent about $10 million over the last 12 years studying the fishery habitat on the Tuolumne River. So we are very sensitive to environmental concerns and causes.

Mr. MCINTOSH. Another area that I wanted to explore with you when you were mentioning the predatory fish, if there were programs developed to protect the salmon that created financial incentives for people along the river, to encourage that either by eliminating the predators or providing the access, would that work to help facilitate the preservation of those species?

Mr. SHORT. Well, I think there are a couple of issues with that. One is the predatory fish are a concern and since they are non-native, some of us, although being biologically sensitive, would like to see them go since they are non-native to the particular area. The other issue that needs to be addressed as well, and we are addressing that, is the environment of the river itself. And by that I mean there have been some alterations of the river stream, there have been some holes in the river stream in which these types of predatory fish tend to live. So if you get rid of that or fix that, that tends then to mitigate the predatory fish. And then again, from an incentive perspective, we need a list of issues from that perspective.

Mr. MCINTOSH. OK, thank you.

Mr. SHORT. Thank you.

Mr. MCINTOSH. Mr. Roberts, I wanted to commend you on the initiative that your industry took early on—as you put it, no good deed goes unpunished—but to take the initiative in order to correct what was a very serious environmental problem, it sounds like from your testimony, and to be able to effectively eliminate that through different practices in your industry, I think is something that we should commend and hold up as an example of how the private sector is environmentally conscious and willing to take the measures that are needed for that.

And Gary's bill is moving forward. In your testimony, that I think you did not have time to get to, you referred to some changes that EPA wanted that would have effectively reduced the good that that bill would do. I take it from your testimony, you think we should resist making any of those changes as it goes through Congress, is that correct?

Mr. ROBERTS. Absolutely. We just believe it undoes the spirit of what Congressman Condit has tried to achieve through the bill.

Mr. MCINTOSH. It sounded to me—and I think those points were very well taken. I think we should maybe take that back to the Corrections committee and let them know about that.

One last question. On the Mendota report, did they look at any of the impact on the loss of jobs or loss of economic opportunity on people's lives in the community there?

Mr. NELSON. Yes, they did. It was a 6-year study directed, again, at the community of Mendota, which has a population of about 7,000, and again it focused on the agricultural economy impacts of rural communities as a result of new water policies. And it did go into their analysis of unemployment, increased unemployment, et cetera, as a result of the policies.

Mr. MCINTOSH. Did it extrapolate to any of the costs to the government? When you have higher unemployment, you have to pay for unemployment services and health care and so on.

Mr. NELSON. No. It refers to that, but it does not quantify it. It refers to that as sort of a third-party impact or an indirect cost.

Mr. MCINTOSH. And the taxpayer ends up paying for it twice.

Mr. NELSON. That is correct.

Mr. MCINTOSH. OK. I would be very interested in that report if that would be available to take a look at.

Mr. NELSON. Yes, I will make copies available to the committee.

Mr. MCINTOSH. That would be great. Thank you.

I have no further questions for this panel. Gary, do you have——

Mr. CONDIT. I would just say to John, we will continue to monitor what we have done with the Corrections Day bill and we know we have some difficulties with EPA and their end, but we will continue to work with that and I know David will pursue that with us.

I would ask Norma—maybe she covered this, I had to step out for a moment—what the cost was, I understand you had to hire a consultant to go through all this.

Ms. CORDOVA. Right. Direct cost to our District would include the $3,000 for the wetlands consultant that we retained, $100 to secure the Army Corps of Engineers 404 permit. Other indirect costs which are really difficult to pinpoint because the board members—we have a five-member board and we serve voluntarily without compensation, we do not have a support staff to do our typing or our mailings and things like that—so we have a lot of indirect costs that would be really difficult to substantiate but I would put a figure on all of that work at approximately—including the cost of the consulting work—at approximately $15,000. And a lot of that is unsubstantiated because of people who voluntarily made phone calls, who made personal contacts, who did copy work, you know, who did all of the legwork and so on to expedite our effort.

Mr. CONDIT. What was the time it took?

Ms. CORDOVA. Well, actually when we first heard that Sand Creek was subject to the Army Corps of Engineers' jurisdiction, which was March 1994, this all culminated then at the end of August 1995 when we actually secured our permit. And I want to stress again, we would not have secured that permit except for Congressman Condit's efforts to expedite the process with pressure

on the Army Corps to do this, and also the March 1995 flood which created a Federal disaster in Stanislaus County.

Mr. MCINTOSH. So you had an act of God and an act of Gary——

Ms. CORDOVA. Right. [Laughter.]

Mr. MCINTOSH [continuing]. Combined to get the right thing done.

You had mentioned in your testimony that your annual budget is about $3,200, so on just the hard costs of a little over $3,000, it doubled your budget as a result of that.

Ms. CORDOVA. That is correct. We are a very small district, we are strictly on assessment on the tax rolls. We assess in a two level structure where the upper watershed area is assessed at 23 cents an acre and the lower watershed is assessed at 40 cents an acre, which brings an annual revenue of approximately $3,200 for our small flood control district. So we are a very small, small peanuts compared to many of the witnesses who have testified today.

Mr. CONDIT. If I may, David, I would like to just clarify something with John Roberts.

Is it not true that the standards of the Clean Water Act will still apply to the discharge of water into rivers and streams? Is that correct?

Mr. ROBERTS. I am sorry, I did not understand the question.

Mr. CONDIT. Is it true that the standards of the Clean Water Act will still apply to the discharge of water into rivers and streams?

Mr. ROBERTS. Yes, absolutely. In other words, we like to say that if the structures that we have built in order to protect natural water bodies are protective of downstream uses, those are not violated, those continue to be protected.

Mr. CONDIT. I just wanted to clarify that.

And for Dan and Allen, I meet with those two guys regularly, so I just want to thank them very much for being here.

Mr. MCINTOSH. I thank all of you, I appreciate this. And your testimony will be very helpful to us in this. Thank you for coming.

Let us move now to our third panel of witnesses, which is the impact of regulations on agriculture here in the Central Valley. And Gary, while they are coming forward, refresh my memory, it is an incredible percentage of the Nation's agricultural product that comes from the Central Valley here and I do not know the numbers but I have always been impressed at the productivity and the enormous amount of resources and diversity that is in the agriculture industry here.

Mr. CONDIT. David, you are in probably the most productive part of the country right here in the Central Valley of California. In my particular Congressional region, we produce 250 commodities, most of them specialty crops. You see many of them right here in front of you: the apricots, almonds—the apricot lady is here now or she was here just a minute ago. Most of them are specialty crops. Water is very important to us. Burdensome regulation takes away the ability for these people to farm, and as I said earlier, this is kind of where the rubber meets the road. Regulation really impacts the Central Valley because agriculture is the economy of the valley and whether it is pesticide, whether it is water regulation, endangered species—unchecked, over-burdensome regulation will absolutely destroy the economy of this Central Valley. And so we are

very productive, God has blessed the Central Valley, he has allowed us to have some water, we are trying to keep some of it. So you are in a great place.

I know you come from a great place too, but we are all very proud of the Central Valley and glad to live here.

Mr. MCINTOSH. You ought to be.

If the panel would please rise and repeat after me.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Let the record show that each of the witnesses answered in the affirmative.

Our first witness on this panel today is Mr. Roger Wood, who is the corporate vice president of J.R. Wood Co. Mr. Wood, thank you for coming forward today.

STATEMENTS OF ROGER WOOD, CORPORATE VICE PRESIDENT, J.R. WOOD CO.; CAROLYN RICHARDSON, ASSOCIATE COUNSEL, CALIFORNIA FARM BUREAU; AND MANUEL CUNHA, PRESIDENT, NISEI FARMERS' LEAGUE

Mr. WOOD. Thank you, Congressman McIntosh and also Congressman Condit, for allowing us to speak today on regulatory reform. It is a tremendously challenging issue for us.

I am the vice president of our company. Our company is a family owned company. We are a large family owned company I guess you would call us. We were started back in 1919 when my father came here. We were just a farm in those days—peaches, apricots, grapes, sweet potatoes. My brother came back after World War II and expanded the agriculture part of the operation, and in 1966 I came back, and in 1970 a couple of his children came back, and so we now have kind of four generations working on the place.

In 1968, we got into the food processing business, which makes us quite different from most farmers. Most farmers, we produce our crops and rely on someone else to take care of them after we produce them. We were involved in the fresh market and now we are involved in processing. As such, we kind of have problems on both sides of the fence, both in agriculture and otherwise.

I thought what I would do today is give you three examples within our own company of different little regulatory problems. I could tell you another 10, but 3 is plenty for our little presentation here.

The first one involved pesticide regulation, which is always a challenge. In California, most of our crops are minor crops, almost every fruit and vegetable crop that we have here is a minor crop, but they are major crops in California. One of our managers farms boysenberries. The whole U.S. crop is 700 acres or something like that, we have 200 in California. He raises 75, he thinks he's the biggest boysenberry grower in the United States.

Last year with our wet winter, we had an extremely wet winter for a change and got rid of our drought. And we caught downy mildew all over California in a number of crops. Grapes were one of the more noticeable ones. And when you catch downy mildew, it is usually a pretty simple problem, you put a chemical called Ridomil on it. The only trouble for boysenberry growers, is that boysenberries are so small a crop, the Ridomil manufacturer never bothered to put boysenberries on its label. And so while everybody else

sprayed Ridomil and got rid of downy mildew relatively easily, our boysenberry farmer lost a couple hundred thousand dollars.

The Ridomil problem even goes on beyond that because it is used in New Zealand, one of the competitors for California boysenberries, and the New Zealand people can use it and even the United States Government allows a tolerance on boysenberries coming into the United States, but there is no allowance to use it in California. And again, Ridomil is a commonly used chemical, used on many other fruits and vegetables, both for downy mildew and other diseases, fungus diseases. But he couldn't use it and so he sustained a big loss. The solution is to allow registrations on groups of crops and not be so particular about each one.

We had another issue with spray paint cans and hazardous waste that I think is kind of interesting. We got started going to make sure we handled hazardous waste correctly and we found that empty spray paint cans were hazardous waste and we were having to put them in barrels and send them off to hazardous waste dumps. It cost us $600 a barrel to send out spray cans. We had to admonish everybody to handle them right. As we got going, we screamed and hollered about such a ridiculous thing because at home we could throw them in the trashcan. Later someone decided that if you poked a hole in the can it was not hazardous any more and now we do not have to do that. Now why somebody figured it out a year and a half after we had saved those things at $600 a pop, I will never know.

We also had an interesting problem with air pollution credits. We had a plant that we rented in Escalon, a town near Modesto here. It had a boiler in it. Our landlord decided he wanted to sell the plant and so we wanted to move the boiler to our Atwater plant to put it to work there. We were first told by the air people that we could just move it down there and change the name. Later they decided that was too easy and what we had to do was close it in Escalon, which meant that you got credits for air pollution. But they discount those credits, so instead of getting 100 credits, we got like maybe 90 for this same boiler that needed 100 credits. The boiler was a high tech boiler, met all the standards.

When we brought it to Atwater, then it got discounted because we were going to use the credits, so instead of 90, now we had maybe 80. And then because Atwater was 40 miles away from Escalon, it got discounted some more. And so what we did was to take a boiler and just move it within our company even, and within the same air district, within the same regional air district, and we had to use up a whole bunch of air pollution credits to move the same boiler from one place to another.

I think the one thing that all of this has done, in the regulatory thing, is created a new industry of regulators, of consultants for regulation. And if there is any employment you want to look at, there has certainly been an increase in employment in consultants for regulators. We hire them to show us how to do all this stuff. And that is the new industry. They do not produce anything, but they certainly use up a lot of money and time.

All we hope for in our area is sound science and peer review on the regulations and I think we could live with them just fine.

Thank you very much.

Mr. MCINTOSH. Thank you, I appreciate that and we will get into this more in the questioning. But ironically when I was working with Vice President Quayle in a prior life, we actually spent a good deal of time debating with EPA about whether you could define the same company for purposes of the clean air as being one entity. And we ended up losing that one after the Bush administration lost the election and they went back to define each site as a separate emitter and, as a result, you have to pay when you move from one facility to the next. That brought back memories of very long, tedious debates with the EPA people about the ridiculous outcomes like the one you explained that would result from that. Our predictions were correct, unfortunately. Thank you for mentioning that.

Our next witness in this panel is Ms. Carolyn Richardson, who is the associate counsel with the California Farm Bureau. Thank you for coming, Ms. Richardson.

[The prepared statement of Mr. Wood follows:]

J.R. WOOD, INC.
"Frozen Fruit — Cold Storage"

Congress of the United States
House of Representatives
Committee on Government Reform and Oversight
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

Testimony on April 1, 1996 at Modesto California from:

Mr. Roger Wood
Vice President of J.R. Wood, Inc.
7916 West Bellevue Road
Atwater, California 95301

Mr. Chairman and Members of the Sub Committee:

Thank you for the opportunity to voice our concerns for the environment and business in California. There are several areas that I wish to cover that I consider crucial issues for business survival in our state.

I am Mr. Roger Wood, Vice President of J.R. Wood, Inc. We are a fourth generation family owned company that was started as Wood Fruit Company in 1919 by my father Elmer Wood.

We began as a farmer of peaches, apricots, grapes and sweet potatoes. We expanded our acreage when my brother Jim, who is our president, joined my father after World War II. I began to work for the company in 1966 and Jim's son and daughter joined in 1970. Our

farming operation today has expanded to 2000 acres. Peaches are our main crop with apricots and grapes.

We began freezing peaches in 1968. We have expanded our frozen line to include other fruits, berries and many California vegetables. We now have our main plant in Atwater and a second plant in Sanger, California. Our 1995 Atwater plant expansion added juice concentrates to our product line. Our fleet of 50 trucks handles most of our raw product and ingredient transportation . We also haul some of our finished product to California and Pacific Northwest customers.

Our 1995 payroll was $27 million with about 1200 people in the winter and 2400 during the busy summer season. We produced 130 million pounds of product last year and expect to do much more this year.

Our company has been an innovator in the use of new technologies. We were the first in our area to use drip irrigation which has decreased our use of water and fertilizers. Our farm managers have used integrated pest management for many years. We designed a bio-mass process for our process waste water disposal needs. We feed our cattle hay that is grown with the plant's treated process water. Our cattle also are fed the by-products from our fruit and vegetable processing. J.R. Wood is committed to be a part of the solution, not part of the problem.

The tremendous growth in regulations has really been a challenge for our company. We are big enough so that we never qualify for any of the small business exemptions. We have worked hard to try and comply with all of them. We have had to dedicate several employees along with consultants to keep our company current and in compliance. The many costs associated with this regulatory revolution have been absorbed by our company or passed on to our customers in the form of higher prices.

One example of the regulatory confusion that we have experienced is the disposal of common small spray paint cans. We first were told that all empties were hazardous waste. Our hazardous waste management was admonishing our maintenance staff to be sure and put them in the specially marked disposal containers. Then they were trucked off to an

expensive hazardous waste treatment facility for disposal, just like if they were some highly toxic industrial waste. Each barrel of these cans cost $600 to properly transport and dispose.

We complained loudly that we had to spend $600 and more to collect and dispose of a barrel of empty cans while at home we can send them out with our regular garbage. Some regulator finally decided that if you puncture the can it will miraculously become a non-hazardous waste. My question is why did we ever have the hazardous waste collection regulation if puncturing the can was the solution.

With this in mind, the first area of concern I wish to stress today is air quality in the California Central Valley. The federal Title III, Title V and Risk Management Plan (RMP) programs are currently under development in California. Our state is seeking equivalency with the federal programs and is working closely with the federal Environmental Protection Agency (EPA) on several issues. However, certain issues in this process raise concern with businesses in California.

We have two programs in California that address the concerns of the RMP, the Risk Management and Prevention Plan (RMPP) and the Cal-OSHA Process Safety Management (PSM) program. Developing these programs is a tedious process that costs thousands of dollars in consulting, employee and management time. Implementing an RMPP & PSM program with the enveloping regulations is a tremendous commitment for any company. In fact these regulations have created a whole new industry of consultants to assist companies like ours to comply with these detailed regulations.

These issues are further complicated by the overlapping and duplicative federal mandates under section 112 of the amendments to the Clean Air Act (CAA). Due to the comprehensive programs that are in place in California, the federal RMP should allow for equivalency of our state programs. The federal RMP is a reporting tool that should allow exemptions for the various states that have already implemented a risk management regulation.

My next issue addresses the future growth of business in California. The federal government pressure on the various air districts in Region IX is considerably worse than other parts of the country. This uneven playing field provides a significant economic and strategic advantage to other businesses in the United States and particularly overseas interests.

The myriad of rules being developed by our air district are mandated by the federal EPA due to our status as a serious non-attainment area for ozone. Due to this designation the federal EPA has mandated that a specific number of rules must be implemented each year, regardless of the science, socio-economic impact or the effectiveness. This policy forces the air district to promulgate rules and regulations without a sound basis in established reliable scientific fact.

A prime example of this is Regulation VIII for control of particulate matter below 10 microns (PM_{10}). The current draft of these proposed regulations is based on data provided by the federal EPA on crops that were studied in other areas of the country. While this data may reflect the farming practices in other parts of our great nation, they do not reflect our agricultural management here in California. After reviewing the data supplied by federal EPA the affected industries in California recognized the lack of a sound scientific basis and the need for information that reflected our agricultural practices. Therefore, a group of farmers and concerned individuals got together and raised money to initiate a study of this problem. With the help of federal funding they initiated a study of this problem at the University of California at Davis (UC Davis). This report will bring valuable information to light identifying the critical components of dust control and the Best Available Control Measures (BACM) to be implemented in the Valley. However, the federal EPA is forcing a timeline that is causing the air district to act prior to the completion of this relevant study.

We in the regulated community have always supported sound environmental practices, but if regulators are forced to develop rules which are premature without a basis in good science then we must raise a voice of protest. The federal EPA should review this situation and take notice of the efforts that we are making to bring sound advise and guidelines to the table.

Next is the issue of Emission Reduction Credits (ERC's) and the expansion of businesses in California. As business and local governments attempt to expand, a requirement will be forced upon us to provide offsets for air pollution contaminants. These offsets are earned by the closure of existing units or the banking of emissions reduction credits. Emissions reductions credits are earned when an emissions unit installs technology and maintains emissions below the current emissions level. When the offset level has been determined the credit can then be "banked" in our current system. The district automatically discounts the credits when they are placed in the bank and they are further discounted when they are removed. The credits are also discounted at the new unit location depending on the distance from the original source.

This banking system is under fire from the federal EPA. Many businesses in California are concerned that we may loose existing credits and all of us wonder how expensive expansion will be in the future. A secure economic future must allow for the expansion of existing business and the establishment of new business. With this current system it will become more and more difficult for business to expand without committing valuable capital resources that could be allocated for personnel, equipment or other expansion needs.

As an example of this, the City of Stockton is in search of credits to offset the expansion of the waste water treatment plant cogeneration facility. The use of air credits by this municipal entity eliminates credits from the bank, raising the value and costs of credits and forcing an economic disadvantage upon California business.

Another example of the hardship to California business is the recent offset requirement forced upon J.R. Wood. Our landlord for our Escalon plant wanted to sell the property. When then consolidated our operations by closing Escalon, we moved our production equipment approximately 40 miles south to our Atwater Facility. This relocation included moving a medium sized boiler used to support our production equipment. This boiler was fully licensed and permitted in the Escalon location and met all emissions requirements.

Please note that both Escalon and Atwater are not only in the same state (California), but in the same air district (SJVUAPCD) and further in the same regional office of that air

district (Northern). When we originally contacted the air district about this move (well in advance) we were advised that it was a simple matter of changing the address on the permit.

However, upon moving the boiler we discovered far different requirements. Not only do we have to offset the boiler emissions but we now must also conduct source testing for this unit.

Upon determination of the proper procedure, the Escalon permit for this unit was closed. We then filed for an Authority to Construct Permit to move it to the Atwater Facility. Now at our Atwater facility we must offset the emissions by using some of our precious air credits and conduct source testing. All of this on an existing unit that operated in the same area of the district.

The rationale used by the air district was the requirements of the New Source Review (NSR) and the anticipated restriction from the federal EPA. By closing our permit in Escalon and forcing us to "bank" the credits we automatically are penalized for moving our own equipment. Upon entering credits in the bank an automatic 10% reduction is taken by the district. To compound the injury the district then discounts the credits further depending on the distance from the original source location. On the bottom line, our company was required to offset emissions for our own unit just for changing the address.

These tactics are used by the district to meet the significant commitments for reduction of pollutants made in the State Implementation Plan (SIP) and the Federal Implementation Plan (FIP). These actions are being questioned by the federal EPA and pose a serious threat to business in California. Under these regulations California will no longer be competitive with the rest of the nation or the world.

As the air district finds it more and more difficult to provide reductions to meet the SIP, the inevitable strategy will be to further regulate "stationary or point" sources. PM^{10}, reactive organic gases (ROG), volatile organic compounds (VOC), ozone precursors, and even carbon monoxide (CO) will be designated in the point source rule development for the air district before the end of 1996.

This enforcement strategy disregards the cost effectiveness of these regulations and the subsequent minor effect to improving the environment. The socioeconomic impacts to the California economy and the devastating effect in the business community are a formula for disaster. As companies are faced with limited expansion potential many will follow the trend to relocate or expand outside California, thus eroding our economic base.

This plethora of new rules is targeted directly at California business since the air district is restricted from regulating the largest generating source of air pollutants in our state, automobile exhaust and mobile sources. Since the air district is unable to regulate mobile source emissions they continue to squeeze the life blood from business, pushing many companies out of the state. The regulators in California continue to extract the toll from business to accomplish the air pollution reduction targets specified in the SIP

While these issues may seem to be California state issues, the root cause is the mandates prescribed by the federal EPA. Our air district is citing the requirements stipulated by the federal EPA as the reasoning for their actions. If business is to survive in California, the federal EPA, and specifically Region IX, must open communication lines with the local districts and heed the outcry from our business community. A close relationship must be forged with the federal EPA and the local districts that includes input from the business community. The continued regulation promulgation without regard for substance or good science is a disastrous course for our state and national economies.

Another concern for business in California is the issue of audit disclosures. Under the current system, if a we conduct an audit of the environmental management and operations we are obligated to record all discrepancies and keep them on file for various agency review, including the USEPA. If the EPA should review the files and discover a violation identified in our audit reports, they can issue a violation citation, fine us and further prosecute the matter, whether the problem has been corrected or not.

When we conduct an audit of our system, our intent is to have a clear picture of the current status of our programs. We want the audit to identify our successful programs, program strengths, weaknesses and the areas that need correction. This punitive enforcement action taken on our own identification of the problems is a negative

reinforcement that discourages implementation of an auditing program that will identify vital information.

All of the above examples illustrate how we have lost sight of the purpose and have become entwined in the bureaucracy of the institutions that we have created. Another example of this is the difficulty of getting chemicals registered for use on the various fruit and vegetable crops grown in California.

Boysenberries are a prime example of this type of regulation problem. Boysenberries are regarded as less than a minor crop, there are approximately 200 acres in California and 500 acres in Oregon. One of my managers farms 75 acres in California and may be the largest single boysenberry grower in the United States.

With such small planted acreage no chemical company wants to spend money to get products registered for this crop. Boysenberries are a cross between a blackberry and a raspberry, and as a result seem to be susceptible to many of the disease problems of the parent species. The California Department of Food and Agriculture (CDFA) considers boysenberries to be a form of a blackberry and therefore allows chemicals registered on blackberries to be used on boysenberries. Raspberries are susceptible to Downy Mildew while most blackberries are not. Unfortunately, boysenberries have inherited this susceptibility.

Downy Mildew affects many different crops such as raspberries, grapes, honeydew, cantaloupe, pumpkin, broccoli and hops. Downy Mildew is not considered a significant problem since the grower can use Ridomil to abate this fungus. Ridomil is registered to combat Downy Mildew and various other fungal diseases for each of the above referenced crops. Ridomil is also registered on many other crops for various other fungal diseases.

Last year we experienced a significantly wet spring providing an exceptional environment for the formation of Downy Mildew. The California boysenberry crop contracted Downy Mildew and the growers could not spray with Ridomil since it is not registered for blackberries, and thus was not allowed to be sprayed on boysenberries.

The subsequent losses ranged from 50% to 85% of normal crop yields. A boysenberry patch will normally yield about 7000 pounds per acre with the fruit worth fifty cents a pound. My manager estimates his loss at $200,000 dollars last year by not being able to apply Ridomil.

This entire fiasco did not have to occur. New Zealand, the worlds largest producer of boysenberries, regularly experiences wet weather during their spring season. New Zealand authorizes the use of Ridomil for their boysenberry crops.

Unfortunately the growers losses in 1995 weren't first time that boysenberry growers were the victim of our cumbersome pesticide regulations. Several years ago because of an outbreak of Downy Mildew in the California boysenberry crops, some boysenberries were imported from New Zealand. These imported berries were tested by the United States Food and Drug Administration and were found to contain Ridomil residue. After some discussion between governments it was decided to allow these berries into the United States because the residue amount was lower than the amount allowed on some other crops. This action was grossly unfair to two boysenberry growers who were bankrupted by the severe losses they incurred when they could not use Ridomil to control their Downy Mildew infestations.

My manager has worked since July of 1995 to get Ridomil registered in the United States for application on boysenberries. On approximately March 15, 1996 he received temporary registration from the federal EPA and the CDFA. I wonder if my employee would have been successful in his request had he not suffered his terrible loss Today, he continues in his efforts towards permanent registry. In a conversation with Ciba Geigy, the manufacturer of Ridomil, he was advised that the federal EPA stated that they had given temporary registration, why worry about permanent registration now? This attitude reflects a very short sighted view of these events.

There is currently a proposal before the government to group similar crops together for pesticide registration. By grouping crops of similar types a company can amortize the expense of pesticide registration over several crops. Boysenberries are just one of the crops that would benefit from this philosophy.

With third world countries becoming more proficient in their agricultural procedures, it is going to become important to keep the United States on the leading edge of technology. Otherwise the jobs related to these products and the economic base will dissolve. Chemical registration reform in the federal system is a necessary step in helping to keep United States agriculture viable in the future.

The California Department of Food and Agriculture recently staged a four day symposium in San Francisco on pesticide residue testing. We sent the head of our laboratory to attend. She reported that there were representatives from Chile, Mexico, Canada, Japan Korea. Sweden and England who gave presentations on their countries' pesticide regulations. The United States Environmental Protection Agency (USEPA) had a staff member scheduled to speak. The talk was canceled because the agency's travel budget had been cut. Our employee felt the USEPA missed an opportunity to learn what other countries are doing and to share with them what we are doing.

In conclusion I want to thank you for this opportunity to express some of our regulatory concerns. We appreciate all of your efforts and continued commitment to improving our environment and maintaining a viable business atmosphere.

Sincerely,

Roger Wood
Vice President
J.R. Wood, Inc.

WCB/bb

cc: Environmental Correspondence File

Ms. RICHARDSON. Thank you for having me.

I will present testimony here from other members of problems we are having under the Clean Water Act and the Endangered Species Act. Those problems have not abated; if anything, they have increased since last year's hearings.

I would like to tell you about one particular case that is just north of us in Butte County, north of us in Sacramento and Butte County. This gentleman does not want his name used at this point because he is almost, he thinks, ready to get his permit. You have heard other testimony here and you will probably hear more, that the agencies we are talking about here, the Corps of Engineers and the Fish and Wildlife Service, are not only arrogant, arbitrary, but they are also vindictive. His concern is justifiable.

So let me just tell you about him and call him our member. Our member came to this country with his family from Laos when he was 16, he is now 35. They settled in the Salinas area and they started growing strawberries on leased lands. We call strawberries our bootstrap crop. If you have a good-sized family, a lot of ability to work hard, you can make a good living on strawberries on leased lands and you can work yourself into being a landowner. It is a tremendous example of the American opportunity.

They did save their money, they transported themselves to Butte County to look for land that they could afford to buy. Salinas area land is out of question. They found a piece of property of about 20 acres in Butte County. It was a very hard-to-farm piece of property, but something a fellow with a lot of initiative and real drive could probably make into strawberry land. It is bordered on two sides by major highways, it has a canal cutting across it. It is a really hard-to-farm piece of property, it is a hand-farm piece of property.

So he bought it, it was agriculturally zoned, you cannot do anything with it except put it in agriculture. It is surrounded by rice lands. He went through the process of getting encroachment easements from Cal Trans and the canal owner.

He hired a contractor to level it. This land had been in rice some 16 years ago and has been in pasture because it is such a darned hard piece of property to farm. So he hired a contractor to go in and start leveling it and working on it. And this kind of ground prep takes some time. There were people on that property quite a few times. His name and address were well known to any agency that had an interest in him. But lo and behold after the leveling began, after the investment had been sunk into the property, Fish and Wildlife Service appeared on the property with badges and told the contractor that this was violating the Endangered Species Act, he could go to jail and would be subject to massive civil fines. Of course, that stopped the leveling.

The supposed endangered species on the property was fairy shrimp. So the property owner had to invest in biological surveys to find out if indeed fairy shrimp were on the property. Lo and behold, this is probably the only piece of property in the Central Valley where there are not fairy shrimp. This did not satisfy the Fish and Wildlife Service.

You have heard about regulatory whiplashing that our members are subjected to. They turned it over to the Corps of Engineers because if there were not fairy shrimp on the property, they were

darned sure there were vernal pools on the property. Sure enough, the Corps of Engineers found vernal pools on the property and this man has now gone through 2 years of administrative nightmare in trying to get a permit on his property. They have lost his paperwork, they have rejected his paperwork because the drawings were not quite to scale. This is absolutely outrageous bureaucratic abuse.

They have finally announced that they are going to give him a permit. Mind you, this is a 20-acre piece of property, the only vernal pool features on it are artifacts of earlier farming—an old canal that no longer serves a function and some old rice checks. There is nothing natural on this property. They are taking 7 acres of it for mitigation, almost a third of the property. And he is going to be required to maintain it in perpetuity.

He came to this country because it was the land of opportunity and he was seeking refuge from governmental abuse. And I wonder if he found it here.

We have more problems like this, multiply it 10-fold under the Endangered Species Act. And we have tried to stop naysaying and start working actively for some sort of a cooperative solution to the problem with our governmental agencies. We, meaning Farm Bureau, have presented to the Fish and Wildlife Service last week a proposal for what we call a cooperative solution, local cooperation, working partners for farming under the Endangered Species Act. I have attached to my testimony a pretty thorough outline of our proposal and what I would like is your assistance in talking to the President or anyone who will listen, to make Fish and Wildlife Service understand that they have the flexibility to try new solutions like this, a pilot program for routine agricultural operations in the Central Valley. It would create the kind of floor of security against prosecution that our folks need before they can engage in any active habitat enhancement on their property.

Thank you.

Mr. McINTOSH. Thank you very much. I would be very interested in working on that. We will take a look at it with Gary and see what we can do in furthering that type of proposal. Because I think those innovative approaches are what is needed in this day. I think frankly we will do a better job, a cleaner job than our whole environmental record.

Our final witness on this panel is Mr. Manuel Cunha, who is president of Nisei Farmers League. Thank you for joining us.

[The prepared statement of Ms. Richardson follows:]

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TESTIMONY OF
CALIFORNIA FARM BUREAU FEDERATION
SUBMITTED TO
THE HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND REGULATORY AFFAIRS
APRIL 1, 1996

Chairman and members of the House Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs:

California Farm Bureau Federation is sincerely appreciative of this opportunity to testify concerning adverse impacts of federal regulations on California's Central Valley.

Despite a dedicated disinformation campaign conducted by very well-funded interest groups residing primarily outside the Central Valley, wrong-headed federal regulatory policies pushing enforcement actions over wetlands in the name of the Clean Water Act, and over listed species under the federal Endangered Species Act, continue to be a very serious problem here for our members and their communities. We will not repeat here the numerous individual examples of such problems our membership submitted in connection with the field hearings over both Acts last year. The problem has not abated. Following the subsequent listings of four fairy shrimp species, we could now add to that list at least four vineyardists in Sacramento and San Joaquin Counties, and a Laotion immigrant in Butte County trying to grow strawberries on about 20 acres of land between two major roads, worth nothing to wildlife as a wetland.

We do not criticize the original lofty goals of either the Clean Water Act or Endangered Species Act. We do criticize the manner in which these laws are being manipulated for the sole purpose of halting economic activity. This manipulation victimizes innocent businesses and landowners who cannot afford to take on the heavy prosecutorial machinery of the entire federal government to protect their rights. The only feasible defense is avoidance. And avoidance takes two forms, neither of which is consistent with our fundamental democratic values of fair and equal treatment before the law, or with the original environmental goals of these powerful Acts. On one hand, our members are avoiding potential conflicts with the law by not using land that should be productive: taking a loss, relinquishing their right to realize a return on their investment and thereby supporting public benefits at their own private expense. On the other hand, many are avoiding potential

conflicts simply by making sure no habitat or wetlands has a chance to get established on their lands.

This is not only inequitable public policy, it is short-sighted. A strong, innovative, productive agricultural sector is the key to a strong economy and diverse environment for California's future. Indeed, this is true throughout the United States, but nowhere is it more urgent for the environment that wrong-headed regulatory disincentives be removed than here in California's Central Valley.

The State of California has grown from about 10 million people in 1950 to more than 32 million in 1996. Even during the recession of the 1990s, when nearly 200,000 people left the state annually, its population grew by nearly half a million people each year. Most of the growth in this decade has been driven by reproduction, a phenomenon that will push population increase exponentially for many years to come, even without return migration from other states as the economy rebounds. In fact, the California Department of Finance estimates that there will be another doubling of California's population in the next 50 years. Population in this great Central Valley is expected to triple before the year 2040.

This growth has brought cultural and economic riches to the state, but has not come without cost to California's agricultural and wildlife resources. As urban centers have grown, agriculture has been displaced and has relocated. Great feats of civil engineering have made this urban growth and agricultural relocation possible.

Now we are recognizing that our state's resources are not limitless, that the ability of human engineering to increase the carrying capacity of the land is finite, and that the state has to protect the resources that support its people, its economy, and its wildlife. Extraordinary creativity and flexibility will be required.

Agriculture is a $58 billion industry in California, contributing 120,000 jobs to the state economy in 1995, providing food and fiber to the state, the nation, and the world. Exports of California commodities contribute $5 billion annually to the U.S. balance of trade. California agricultural resources are unique and irreplaceable: a combination of climate, fertility, and water that make it the most productive agricultural area of the nation, indeed, the world. It surpasses the famed Fertile Crescent of ancient Mesopotania. It has national economic and strategic importance.

California agriculture also provides a vast habitat resource, both intentionally developed and as an incidental benefit of production activities. Control of noxious, often alien weeds; forest, range, and field management; fencing of environmentally sensitive areas;

streambank stabilization; erosion control, and a host of other farming and ranching practices provide and protect wildlife habitat. Freshwater streams and stock ponds on these productive private lands provide water-cleansing and recharging benefits as well as habitat to fish; corn, wheat, rice, other field crops and pasturage provide bountiful food and habitat for deer, antelope, elk, ducks, geese, and countless wild creatures, some of which have been listed under the state and federal Endangered Species Acts.

Many rare, threatened, and endangered species depend heavily on cultivated land as well as rangeland for their continuing existence. For example, a recent study conducted in Northeastern California for the U.S. Forest Service found that Swainson's hawks nesting in sagebrush habitat more than one mile from alfalfa fields suffered 100 percent nest failure, while pairs nesting within one-half mile of alfalfa fields enjoyed an 86 percent success rate in rearing broods. The Swainson's hawk is a state listed species which nests in riparian areas of the Central Valley and Northeastern California. In the Central Valley, not only alfalfa, but beets, tomatoes, rice, cereal grains, and other low-growing row and field crops, as well as managed rangeland and irrigated pasture, all serve as important foraging habitat for these hawks.

Another example is the tri-colored blackbird. One of the greatest concentrations of tri-colored blackbirds in recent history nested in a grain field on a San Joaquin Valley dairy, preferring this site to a nearby federal wildlife refuge containing supposedly "ideal" blackbird habitat. The tri-colored blackbird is a state species of concern also listed under the federal Migratory Bird Treaty Act, and therefore protected under the federal Endangered Species Act.

California's productive agricultural lands clearly play a pivotal role in the preservation of wildlife--while contributing property and income taxes, providing jobs, ensuring human food security for the future, and preserving open space that is vital to the health and beauty of the environment. Preserving California's wildlife means preserving California's agriculture.

Sadly, over the last ten years, endangered species issues have reduced wildlife habitat on agricultural lands, particularly in the San Joaquin Valley. Because of the breadth given the take prohibitions of both the state and federal Endangered Species Acts, agricultural landowners and managers developed a well-founded fear that the presence of potential endangered species habitat on their lands could lead to regulatory interference with necessary production activities, loss of management flexibility, and even civil and criminal penalties for unintentional harm to threatened or endangered species or their habitat. Loss of land collateral value and financing problems resulted in many areas, most notably

near urban growth centers, where endangered species enforcement activities were most vigorously pursued, and habitat resources on agricultural lands most important. Many agricultural landowners and managers who once would have encouraged potential habitat within their operations now actively discourage it, at great loss of opportunities to increase the wildlife carrying-capacity of nearby public lands, to sustain species not served by public lands, and to contribute to the greater overall biological diversity of the state.

The San Joaquin Valley supports a large number of species listed as threatened or endangered, even though some biologists estimate that only 3-5 percent of the Valley remains as natural landscape. Most ecologists believe that management of private lands in ways compatible with many species needs will be very important for long-term species survival, providing linkages between core habitat areas. Opportunities exist to promote conservation while protecting agricultural productivity.

Private agricultural operations have historically played, and can continue to play, an important role in providing habitat for a wealth of species. With the removal of unnecessary disincentives and the development of meaningful incentives, agricultural producers could play a critical role in recovering listed species in the San Joaquin Valley, while maintaining their unequalled productivity.

An absolutely essential requirement for reversing the downward trend in habitat on agricultural lands is removing the powerful disincentive created by fear of liability for incidental takes in the course of routine agricultural activities and emergency response and repair actions. Without either a statutory exemption or a general incidental take permit covering all such activities and actions, prudent agricultural landowners and managers will continue to prevent inadvertent violations of the Endangered Species Act by keeping their lands free of habitat.

It is broadly recognized that our towering federal rgulatory structure is plain wrong-headed in many, many areas, that it has diverted investments to pointless paper chases that should be directed toward solving environmental problems, and that it has stymied innovation by private and local public institutions. We would repeat for the Subcommittee a call for change issued three years ago by <u>this</u> administration. Fresh approaches, looking beyond details to potential net benefits; greater confidence in this nation's private social and economic institutions; greater reliance on state and local management and on individual initiative were the key elements of President Clinton's Executive Order for Regulatory Reform. As stated by the President:

TESTIMONY OF CALIFORNIA FARM BUREAU FEDERATION

> The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engines for economic growth; regulatory approaches that respect the role of State, local and tribal governments; and regulations that are effective, consistent, sensible and understandable. We do not have such a regulatory system today.
> Executive Order No. 12866, September 30, 1993, F.R. 517735.

Among the twelve factors that this Executive Order requires federal agencies to satisfy in evaluating existing or proposed regulatory programs, the four summarized below are particularly applicable to this problem of endangered species regulation:

1. **Each agency shall identify and assess the significance of the problem it intends to address including the failures of private markets or public institutions that warrant new agency action.**

Here the problem is not the failure of private markets, but the frustration of private market solutions by regulatory disincentives. State and local public institutions have been rendered ineffective by rigid federal regulatory prescriptions. The loss of habitat resources that once were provided by private enterprise on private lands, particularly agricultural lands, will be seen as the regulatory misfire of the 20th century, as we look back from the next five decades of rapid human population expansion.

2. **Each agency shall examine whether existing regulations or other law have created, or contributed to, the problem that a new regulation is intended to correct, and whether those regulations or other law should be modified to achieve the goal more effectively.**

The failure of the existing regulatory approach is manifest both on the ground and in the rift between the agricultural community and wildlife agencies. Clearly, that approach must be significantly modified before agricultural lands will again play any significant role in species conservation.

3. **Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.**

TESTIMONY OF CALIFORNIA FARM BUREAU FEDERATION

We have proposed an Endangered Species Act general incidental take permit program to the U.S. Fish and Wildlife Service (the Service). Our Program offers significant advantages in increased flexibility and reduced implementation costs over the existing direct regulation approach. It creates the foundation of operational certainty that is essential to maintaining agricultural land values; without this, little habitat creation or enhancement can be accomplished on private lands by market incentives or otherwise.

4. **Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.**

This is a clear directive to explore results-oriented, cooperative processes before resorting to direct, prescriptive regulation. Our Program presents a sound system of scientifically-supported performance objectives, to be implemented locally, with the attainment of performance objectives monitored through a clear reporting structure. Local implementation will result in closer but less intrusive monitoring, and the flexibility of the general permit structure will allow mid-term adjustments and modifications which cannot be achieved under the rigidity of individual prescriptive permits.

Although our limited proposal cannot address the most serious problems of the Endangered Species Act--these clearly are insolvable without statutory reform--we believe our proposal would serve as a beginning regulatory model for cooperative partnership between agricultural private enterprise and government, working toward a richer, more diverse 21st century.

We have attached to this testimony the text of the Program as it has been submitted to the Service. We would appreciate receiving the benefit of the insight and wisdom of Subcommittee members and their staff on this proposal. We ask for your support in achieving such a cooperative partnership between industry, state, and federal government, in working together to achieve our national environmental goals, including secure and diverse wildlife resources for the future. Agricultural producers and their communities have a key role to play if they are not prevented from doing so by poorly conceived federal regulation.

Thank you for this opportunity.

CAROLYN S. RICHARDSON
Director
California Farm Bureau Federation
Department of Environmental Advocacy

PROPOSAL FOR A GENERAL INCIDENTAL TAKE PERMIT FOR ROUTINE AGRICULTURAL ACTIVITIES AND EMERGENCY RESPONSE AND REPAIR ACTIONS FOR AGRICULTURAL INFRASTRUCTURE

A. Definitions:

1. "Agriculture" shall include, but not be limited to, the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural commodity including timber, viticulture, apiculture, or horticulture, and the raising of livestock, fur bearing animals, fish, or poultry.

2. "Agricultural Land" is land on which agriculture is conducted, including but not limited to cultivated land, managed rangeland, and lands which are managed as part of an existing agricultural operation.

3. "Routine agricultural activities" is intended to encompass all activities required to engage in agriculture on agricultural land, including but not limited to:

   a. Planting; cultivation; tillage and harvest of crops; range management; fallowing land for crop rotation, water conservation, water transfer, or other accepted agricultural purposes, and returning fallowed land to production; cultivating land managed for grazing and returning cultivated land to grazing; putting land under Conservation Reserve Program or Wetlands Reserve Program contract and returning such lands to production; and application and incorporation of organic and inorganic materials on and into the land surface;

   b. Water management including irrigation, pipe, pond, lagoon, ditch and levee maintenance and repair, control of surface runoff, and tailwater recovery;

   c. Installation, operation, maintenance, and repair of facilities and appurtenances for water production, conveyance, storage, treatment and groundwater recharge;

   d. Installation, operation, maintenance, and repair of utility infrastructure;

   e. Installation, operation, maintenance, and repair of

facilities and appurtenances for agricultural equipment, product and byproduct handling, treatment, and storage;

f. Installation, operation, maintenance, and repair of facilities and appurtenances to shelter and maintain landowners, employees, and agents, and infrastructure to service them;

g. Use of fixed and mobile equipment within and around agricultural lands;

h. Compatible uses as defined by California Government Code sections 512381. through 51238.3;

i. Changing crops or cropping patterns or cultural practices to adapt to changing market needs, and technological innovations that may be developed, so as not to inhibit or retard improvements in farm or ranch management;

j. Other ongoing, routine, agricultural activities as may be verified as accepted practices by the County Agricultural Commissioner.

4. "Emergency response and repair actions" shall include, but not be limited by, corrective actions required to restore agricultural facilities and infrastructure to working condition following breakage or failure. Such facilities and infrastructure shall include but not be limited to utility infrastructure such as power lines, gas or water pipelines, canals, ditches, dams and existing buildings, whether on agricultural land or connecting essential services to agricultural land.

5. "The Program" is this General Incidental Take Permit For Agricultural Activities and Emergency Response and Repair Actions for Agricultural Infrastructure, which is a Habitat Conservation Plan pursuant to section 10(a)(1)(A) or (B) of the federal Endangered Species Act.

B. Features of the General Incidental Take Permit:

1. Scope: The scope of this Program initially is agricultural land in the San Joaquin Valley and Carrizo Plain of California, although enrollment may be extended county by county in other areas of the state upon the request of agricultural producers. All or parts of nine counties are included in the pilot Program: Fresno, Kern, Kings, Madera, Merced, San Joaquin, San Luis Obispo, Stanislaus, and Tulare Counties. For purposes of the Program, all references to the San Joaquin Valley

shall include the Carrizo Plain and its surrounding foothills. Within this area, all types of agricultural lands and activities, and all wildlife regardless of its status under the state or federal Endangered Species Acts will be included.

2. Purpose: To develop a voluntary program that will enable agricultural landowners and managers to conduct their normal activities, and to undertake voluntary additional actions that may benefit wildlife species, without fear of liability for incidental take under either the state or the federal Endangered Species Act.

3. Incidental takes resulting from routine agricultural activities, including infrastructure and facilities maintenance and emergency response and repair actions, would be authorized by the U.S. Fish and Wildlife Service (FWS) under a general permit held by the California Department of Fish and Game (CDFG).

4. Individual permits, enrollments, or certificates of inclusion would not be required; all agricultural lands in an included county would be covered.

5. Incidental take would be minimized and mitigated under the general permit by educational activities encouraging the implementation of recommended voluntary management practices in connection with routine agricultural activities and emergency response and repair actions, and by facilitating the development of incentives for voluntary habitat conservation, enhancement, and creation projects on agricultural land, where practicable. The purpose of the voluntary management practices would be to avoid, minimize or mitigate the impact of any take resulting from routine agricultural activities and emergency response and repair actions, to the maximum extent practicable, and to foster opportunities to benefit wildlife on agricultural lands to the extent consistent with agricultural productivity.

6. The incidental take permit would not be contingent upon completion of the process of developing recommended voluntary management practices; rather, the development of recommended voluntary management practices would be a concurrent process under which recommendations would be added, amended, or withdrawn according to advances in scientific knowledge, technological innovation, and experience with their success on the ground.

7. A State Coordinating Committee would be established. Participants would consist of state and federal agencies with land resource jurisdiction and other interested

parties, including CDFG, CDFA, DPR, SWRCB, FWS, EPA, BOR, the Corps of Engineers, NRCS, University of California Cooperative Extension (UCCE), the State Agricultural Commissioners Association, Regional Council of Rural Counties, Society for Range Management, American Farmland Trust, and organizations representing commercial agriculture. CDFG would be the lead agency of the State Coordinating Committee. Committee participants must represent a balance of private sector and public sector interests, and, as much as possible, public sector participants should appoint representatives with an understanding of agriculture.

8. Non-profit conservation organizations such as Trout Unlimited, Ducks Unlimited, the California Waterfowl Association, Mule Deer Foundation and others, would consult with the State Coordinating Committee as "cooperators" in the Program, to offer additional expertise and practical problem-solving experience, to develop funding for wildlife enhancement projects, to assist in educational outreach efforts such as handbook preparation and distribution, and otherwise contribute positively to achieving Program goals.

9. The state and federal agencies on the State Coordinating Committee that have regulatory authority would enter into an MOU providing for interagency communication and cooperation in the exercise of their authority to achieve the purposes of the Program.

10. The State Coordinating Committee would identify biological factors to be considered in the development of voluntary management practices recommendations, prepare a framework for development of such voluntary management practices recommendations by Local Advisory Committees, identify sources of public and private funding and other incentives, provide coordination among state and federal agencies with jurisdiction over other environmental programs affecting agricultural lands, and provide consistency among state and federal agencies to eliminate unnecessary barriers to the achievement of Program goals, including the implementation of voluntary management practices on agricultural lands.

11. The State Coordinating Committee would provide for the establishment of Local Advisory Committees in counties at the request of local producers. It would enter into an MOU with each Local Advisory Committee as it is established, to provide guidance, technical support, and, where appropriate, funding for Local Advisory Committee activities.

a. The establishment of Local Advisory Committees would be initiated within counties. Agricultural producers in any county would ask the County Agricultural Commissioner to convene a local committee, constituted as described below, to consider inclusion in this Program. If it determined inclusion was desirable, the committee would send a written request to the State Coordinating Committee for recognition as a Local Advisory Committee, and for inclusion in the Program. Where an Agricultural Commissioner has jurisdiction over more than one county, producers from any county within the jurisdiction could request the Agricultural Commissioner to establish a Local Advisory Committee for that county.

b. The Local Advisory Committees would consist of representatives of the Office of the County Agricultural Commissioner, UCCE, local water districts, NRCS, RWQCB, Certified Rangeland Managers, individual agricultural producers, and other persons with relevant technical expertise and experience to contribute positively to the development of locally specific, voluntary management practices recommendations.

c. The Local Advisory Committees would, in accordance with the framework provided by the State Coordinating Committee, and working with interested producers: develop recommendations for voluntary management practices in each county, addressing locally specific geographic, biological, agricultural-economic, and other variables relevant to economically feasible and practicable minimization and mitigation of incidental take; undertake educational outreach to producers concerning development and implementation of such practices, and provide assistance to interested producers, including providing technical expertise when requested by the producer; provide coordination with other environmental programs and projects on agricultural lands to identify the voluntary habitat enhancement opportunities of such programs and projects and to reduce interference with management practices implemented according to its recommendations; provide coordination with regional single species and multiple species Habitat Conservation Plans (MHCPs, generically, hereafter) that may be established in areas encompassing agricultural lands (see paragraph (f.) below).

d. Individual producers would be contacted by such Local Advisory Committees through an active educational outreach program, and encouraged to consult with their County Agricultural Commissioners and UCCE Farm Advisors and Livestock Advisors on potential opportunities for implementation of recommended voluntary management practices appropriate to the particular agricultural operation.

e. When requested, Local Advisory Committees would provide on-site consultation to interested producers for identification of potential habitat opportunities, implementation of habitat enhancements, and mitigation and minimization of incidental takes of threatened and endangered species attracted by such habitat. If requested, the Local Advisory Committees would assist producers to obtain technical and scientific expertise through cooperating institutional committee participants, and would work with private consultants retained by producers.

f. The Local Advisory Committees would serve as coordinator between this agricultural Program and any regional MHCP program that may be developed for the area, for the purpose of making opportunities available to interested producers to enter into voluntary conservation agreements offered by the regional MHCP for its reserve system.

12. UCCE Farm Advisors and Livestock Advisors, who play a key role in the educational outreach program of the Local Advisory Committees, would provide program monitoring by submitting periodic trend analyses to the State Coordinating Committee, covering producer involvement in the program and habitat conditions on agricultural lands within their jurisdiction. Information resources that could be utilized in these analyses as examples of indirect but generally reliable indicators of trend include: water district crop reports, confidential implementation reports submitted voluntarily by individual producers, and consensual site visits by UCCE personnel. From such indicators, a case study could be conducted to test the extrapolation of data from reported and surveyed properties to deduce area trend; this is analogous to the methodology presently employed to extrapolate fish population impacts from screen samples at water intake pumps. Based on such trend reports, the State Coordinating Committee could determine whether projected net species benefits are being realized, and could investigate whether adjustments to recommended

practices, greater support for educational activities, or increased incentives should be undertaken, or such other appropriate measures as would better achieve the goals of the Program.

13. Use of fertilizers, insecticides, and other agricultural chemicals would not be subject to the Program, but would be addressed, as at present, by other means: the County Agricultural Commissioner, State Department of Pesticide Regulation, the USDA and USEPA through label use restrictions and such means as the DPR/EPA County Bulletins issued by DPR.

14. The Program would not confer federal jurisdiction over private agricultural lands.

C. Application of the General Incidental Take Permit to Habitat Conservation, Enhancement and Creation:

1. Purpose: To maximize what willing landowners can accomplish on their properties, by creating a secure platform of protection for agricultural activities so that there will be support for voluntary habitat conservation, enhancement, and creation on agricultural lands, and by developing incentive and reward mechanisms within the Program that will support habitat projects while maintaining and protecting the long-term economic viability of the host agricultural operation and neighboring operations.

2. For uncompensated habitat enhancement, conservation or creation, the preceding general incidental take permit would insulate the landowner from liability for takes due to routine agricultural activities and emergency response and repair actions.

3. Habitat created or enhanced as an incident of governmental programs such as the Conservation Reserve Program, Wetlands Reserve Program, and watershed projects for control of nonpoint source pollution under the Clean Water Act, would be classified as routine agricultural activities; incidental "takes" of species attracted by such habitat would be covered by the incidental take general permit except as otherwise provided pursuant to a voluntary conservation agreement.

4. For uncompensated habitat resources, there would be no biological surveys or habitat baseline determinations without written landowner consent. However, where compensation is given for habitat, it is reasonable for the Department, Service, and any provider of compensation to require biological surveys and the establishment of

appropriate protections for the resource.

5. The State Coordinating Committee would identify all potentially applicable public and private compensation sources for habitat conservation, enhancement, and creation projects on private lands, and would make this information available to Local Advisory Committees. Compensation could include a variety of means, including funding, tax credits, non-monetary incentives such as transferable development credits and any other means accepted in a voluntary transaction. Emphasis would be placed on finding sources of funding for projects that do not take land permanently out of production, but allow for shifting habitat areas and rotation into and out of habitat while maintaining the overall productivity and economic viability of the agricultural enterprise. The State Coordinating Committee would serve as a grant coordinator for Local Advisory Committees, if requested, but would not direct, control, or otherwise limit the Local Advisory Committees in pursuing any form of compensation for habitat projects within their counties.

6. The State Coordinating Committee would also develop guidelines for Local Advisory Committees to facilitate creation of habitat resources by interested agricultural producers for sale or lease as income-producing mitigation, or for other compensation. Such guidelines should include recommendations for: evaluating impacts on the overall agricultural viability of the enterprise; periodic reevaluation of the net impacts of the habitat project to the viability of the enterprise, allowing for modification or termination, if appropriate; consideration of local tax base and economic impacts, including loss of jobs and adverse impacts on the critical mass of agricultural business in the county necessary to support agricultural infrastructure; and such other recommendations as may be determined to be important to protect the state's agricultural as well as wildlife resources. The State Coordinating Committee would also establish a streamlining process to remove unnecessary regulatory conflicts and procedural obstacles to such transactions.

7. The Local Advisory Committees would consult with interested producers in developing innovative proposals for treating habitat creation and management as an agricultural product, including development of stocks of plants and plant communities required by species likely to experience adverse impacts from projected local urban growth.

8. The Local Advisory Committees would provide a point of

contact between development project proponents and MHCP advisory bodies seeking mitigation opportunities, and agricultural producers interested in obtaining income or other compensation by developing mitigation resources on their lands. In such coordination efforts, Local Advisory Committees would consult State Coordinating Committee guidelines and any established procedures.

9. The following protections must be provided for agricultural producers engaging in compensated habitat projects on their lands, and for their neighbors:

   a. Any restrictions on the immunity otherwise provided to the host property by the general incidental take permit for impacts of routine agricultural activities should be specifically addressed in the planning phase and expressly stated in the conservation agreement.

   b. There must be no additional incidental take liability for the agricultural operations of other landowners. The incidental take general permit would fully protect such landowners from any take liability due to adverse impacts on listed species caused by their routine agricultural activities and emergency response and repair actions.

   c. All necessary buffers for pesticide use and other agricultural activities must be incorporated within the boundaries of the host property; provision must be made to compensate or otherwise resolve potential depredation and other adverse impacts on neighboring agricultural operations caused by plant and animal species fostered or attracted by the habitat enhanced or created for compensation; provision for such compensation or other resolution must be made at the time the conservation agreement is established.

   d. Habitat conservation, enhancement, and creation on agricultural land--whether compensated or not--must be wholly voluntary, not achieved through eminent domain or required as permit conditions or as exactions for a parcel split in conformity with existing zoning, as long as the property is retained in agricultural production.

10. The Local Advisory Committee would establish an arbitration panel or dispute resolution subcommittee to resolve disagreements over compliance with the terms of conservation agreements for compensated habitat on agricultural lands, and to resolve disagreements between

neighbors over adverse impacts to and from agricultural activities off the host property. The arbitration panel or dispute resolution subcommittee should include the County Agricultural Commissioner, U.C. Cooperative Extension Farm Advisor and Livestock Advisor, at least three agricultural producers knowledgeable in the commodities affected, representatives from CDFG and FWS, and such other people as may be necessary to arrive at an informed and equitable resolution of the dispute.

Mr. CUNHA. Thank you very much, Congressmen.

Nisei is second-generation Japanese-American farmers and it was started in 1970 by the president, who is now retired, Harry Cubo. Our organization represents small family farmers in the San Joaquin Valley as well as in the Monterey-Salinas area, which are predominantly flowers and vegetables. Our membership grows from wine, raisin, table grapes, tree fruits, citrus, a variety of nut crops as well. But the average age is 67 years old and the average acre size is approximately 70 acres.

The issue that I will be discussing with you today, which has confronted California agriculture as well as in other States, but especially California and that is under the Federal Clean Air Act of 1990. I will not read the document, I will just go over it briefly so I can make the points to you.

In 1990, the Federal Clean Air Act adopted a thing called PM 10 which is 10 micron size of air particulate and smaller. In 1990, the Clean Air Act published this standard called PM 10 and California happened to be one of those States that apparently, due to good science, as they say—they being EPA—was out of attainment for PM 10, PM 10 being fugitive dust. Fugitive dust being geological as well as gaseous type particles, those that are below 2.5 in size micron affect the lower part of the respiratory into the lung system and that part. Where as above 2.5 getting into the upper respiratory, being not as harmful as predicted.

But what happened is like everything else, as you heard today, is a story of science, good science based with peer review and going to the industry with PM 10, as I will confront you. Two weeks ago we met at our air district in the San Joaquin Valley, called the Unified Air Pollution Control District, with the California Air Resources Board and Triangle Park EPA, met with several of us growers and organizations to talk about how they are going to develop a PM 10 standard for controls on farming operations. Immediately they put up on the wall or on an overhead 12 new crops that we are going to have to look at and control PM 10 fugitive dust from. Those 12 crops consisted of carrots, lettuce, wheat and barley. And their statement was that these crops produce 90 percent of the PM 10 in the San Joaquin Valley. Lo and behold, in 1990, we started working, of course with Congressman Condit's efforts, we were able to get funding to develop the first agricultural real research going on in this valley on PM 10 in agriculture.

Again, a great opportunity, what we refer to as a love fest. The love fest became where we have a partnership with the State, the Federal and industries working together to try to get real answers, real science.

Well, in that meeting 2 weeks ago, when they put that up there, that immediately shot down our whole concept because again, California Air Resources Board, knowing how involved agriculture has been—and I will make a comment to this that needs to be on the record—agriculture in California approached the California Air Resources Board and EPA to start the first real heavy, intensive PM 10 study in the Nation. This study is $24 million over a 5-year period and it is to address all types of PM 10 from urban, rural areas and agriculture is the biggest part, about $7 million of that study, to define the real problem.

Two weeks ago they were recommending—and I will give you an example—in 1989, EPA came out with a regulation called Reg 8 Fugitive Dust. In there, they cited that dairy cows had to control the amount of emissions that a dairy cow dropped on the ground, in other words, the manure, and how much manure can be around the feet of that cow, about approximately 4 centimeters. Well, we suggested a control measure that EPA recommended was to cork off the cows, which we could do, the old girls are easy to get behind and take care of, but we approached Henry Waxman in 1990 in Washington, DC in his committee, it would be pretty difficult, we thought, to go in and cork off a dairy bull that is 3,000 pounds that is locked behind a fence that you could not drive a tank through, and he got the hint that again EPA had come out with a control measure that was absolutely baseless and senseless at all to deal with manure.

Another issue upon the same track was to control the amount of emissions that a farmer is disking. Again, they used the word tillage. Tillage to EPA means any time you disturb the ground or any movement. Well, their recommendation was to take all of our farm land in the San Joaquin Valley in 1989–1990 and put a water tank on the back of the disk to suppress the dust. Again, PM 10 is like the ozone of the 21st century, we know very little about PM 10.

Let me quote you from the New England Journal of Medicine from 1994, it stated that—the New England Journal of Medicine stated that it is not PM 10 that is a problem, but it is 2.5 and the gaseous molecules of that that are a real health threat to human health, not geological and above 2.5. Again, EPA disregarded that.

So, at the present, we are in a situation where agriculture has 6 months—you just stopped me, I am going to finish with this——

Mr. MCINTOSH. No, go ahead and sum up.

Mr. CUNHA [continuing]. That in 6 months California agriculture, the San Joaquin Valley, 4.5 million acres, $14 billion, has to develop control measures on our farming operations which our science is currently on its way through the University of Davis with USDA in Washington, DC, in coordination, natural resource conservation people. But yet, negating to let us use the good science, they are saying we have deadlines that we have to submit a plan in February 1997 with control measures of the bad science.

And in closing, they predicted that the Sierra Nevadas to my right, to the east, created some 200 million tons of PM 10 because we cultivate the Sierra Nevadas twice a year. We do not till the Sierra Nevadas, you cannot do that—I mean it is just totally illogical, but that is their thinking, so we have some tremendous economic disaster headed in the next 6 months for us.

[The prepared statement of Mr. Cunha follows:]

Nisei Farmers League

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THE IMPACT OF FEDERAL REGULATIONS ON THE CENTRAL VALLEY
TESTIMONY BY MANUEL CUNHA, JR.
PRESIDENT, NISEI FARMERS LEAGUE

I wish to thank you, Chairman David McIntosh of the Oversight Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs and the Honorable Gary A. Condit for holding a hearing in California's San Joaquin Valley. My name is Manuel Cunha, Jr. and I am the President of the Nisei Farmers League which represents approximately 1000 family farms through the San Joaquin Valley and the Salinas, Monterey area. Our membership consists of farms that raise raisin, wine and table grapes, tree fruit, vegetables, dairies and flowers and who have been farming and ranching for the past 60 years.

At this time I would like to present some background about our Industry group in the San Joaquin Valley. In 1989, a PM_{10} Agriculture Advisory committee was formed out of the San Joaquin Valley representing some 4.5 million acres of farmland in the surrounding 8 counties. This group consisted of growers and organizations such as the Nisei Farmers League, California Cotton Ginners and Growers Association, California Department of Food and Agriculture, California Farm Bureau, the local farm bureaus, Resource Conservation Service, U. S. Forestry Service, U. S. Parks Service, Air Resources Board, and the Environmental Protection Agency with a goal to review the Federal Clean Air Act of 1990 in the area of PM_{10}. PM_{10} is an atmospheric particle with an aerodynamic of less than 10 microns in size.

In May, 1991, the Advisory Committee expanded to include non agricultural organization and industries such as the oil and building industry, County Health Departments, Cal-Trans and manufacturers. We changed our name to the San Joaquin Valley Citizens Advisory Group of Industries for "Air Quality" which has over 150 different organizations and businesses.

I will specifically address those areas of the 1990 Federal Clean Air Act which have a major impact on our Industry, Agriculture, in California. The EPA document that I am referring to is the 1985 Air Pollutant Emission Factors, volume 1 &2. Stationary Point and Area Sources, (AP 42), Midwest Research Institute-Control of Open Fugitive Dust Sources, 1976-1981. The EPA's 1992 Best Available Control Measures (BACM) is also questionable.

The San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) in 1991, adopted the Moderate Area PM_{10} Attainment Plan which committed the district to implementing Reasonably Available Control Measures (RACM). In 1994, the district adopted its Serious Non-attainment Plan for the San Joaquin Valley. Both plans were based on the information above where agriculture was not based on good science. The Federal Endangered species Act was in conflict with the Federal Clean Air Act. For example, one control measure was to let vegetation grow on your open areas which would help to control wind blown dust, but by doing so you could have a endangered species come on to your land and now you unable to farm that area.

We have a few major points which must be part of our future in agriculture.

* Determination of accuracy and appropriateness of the published emissions inventories, emission factors, control practices, best management techniques, seasons, and air quality regulation. The Agricultural Advisory Committee believes that good science must be employed prior to assessing additional environmental mandates. In the area of PM_{10}, many emissions factors employed to arrive at the emissions inventory are either outdated or do not apply to the specific conditions of the San Joaquin Valley. The Inappropriate values are later used as a regulatory tool to promulgate rules on the industry.

  The new rules developed without adequate scientific facts yield to incorrect control measures that create unneeded burden upon industries. The Advisory Group has been instrumental in obtaining EPA funds to study the emissions factors selected agricultural practices. This study along with the future studies will aid Air Pollution Officials as well as the agriculture community to gain a better understanding of the causes and nature of PM_{10}, the control measures would be most effective since compliance will be embraced voluntarily with education.

* Development of an adoption and implementation schedule for specific control measures considering technological feasibility, total emission acceptability, and enforceability. This goal will be achieved through the PM_{10} study efforts. The first phase of the PM_{10} studies in agriculture and other industries will be completed in the upcoming five years.

- The second phase on the study focuses on the formation of secondary particulate under the valley winter conditions. This state of art study will provide valuable information for future coordination of PM_{10} plan with the expected reduction from secondary precursors of PM_{10}. The federal government has already allocated funds to initiate the study. The study will be performed under the direction of the existing San Joaquin Valley Study Agency (formerly SARMAP) with assistance from the California Air Resources Board, EPA and the industries.

In closing, I would like to point out that it is important to note that the studies are intended to provide information not only specific to the development of an effective attainment plan within the San Joaquin Valley region, but also improved methods and tools for monitoring, emission estimation, control strategy development and modeling that can be used to develop effective PM_{10} emission reduction programs throughout the nation.

I have included a summary of the "California Regional PM_{10} Air Quality Study".

Mr. Chairman and sub-committee members, I would like to thank you again for the opportunity to present testimony before you today.

Manuel Cunha,Jr
April 1, 1996

CALIFORNIA REGIONAL PM_{10} AIR QUALITY STUDY

Background

Both the national and State air quality standards for particulate matter smaller than 10 microns in diameter (PM_{10}) are consistently exceeded in Central California (Figure 1). This adverse air quality compromises the health of the more than 10 million people living in the region, reduces visibility, and adversely impacts quality of life. The 1990 federal Clean Air Act Amendments require that controls be implemented in Central California which will attain the national PM_{10} standards by December 31, 2001. Attainment of the standards will require effective and equitable distribution of controls among sources. However, gaps in our current understanding of the amount each source contributes to the overall problem severely hinder development of a cost-effective attainment plan. Additional information on the chemical compositions, spatial and temporal distributions, and chemical transformation of pollutants is needed to address Central California's PM_{10} problem.

The objectives of the California Regional PM_{10} Air Quality Study are to: 1) provide an improved understanding of emissions, PM_{10} composition and dynamic atmospheric processes, 2) establish a strong scientific foundation for informed decision making, and 3) develop methods to identify the most efficient and cost-effective emission control strategies to achieve the PM_{10} standards in Central California.

Schedule

The study was initiated in 1991 by the agricultural community who approached the U. S. Environmental Protection Agency for funding. Government entities and industries endorsed the study, and full-scale planning began in 1992. Analysis and modeling of existing data and emission control demonstration studies were initiated in 1994. A preliminary field monitoring program was conducted during fall and winter of 1995-96. Emission date improvement efforts will be initiated in 1996. A list of on-going projects is provided in Table 1. Large scale field monitoring programs are planned for 1997 through 1999. Analysis of the data collected during the field programs and air quality model development and application will follow the field programs. Completion of the project is anticipated in 2001. The project schedule is shown in Figure 2 with relevant regulatory deadlines.

Budget

The budget for the core study is $24 million; an additional $3.4 million is identified for special agricultural emissions projects. Funding is provided through a cooperative partnership between the public and private sectors. Current and proposed contributors are shown in Figures 3 and 4. The study is directed by the same Policy Committee that managed the highly successful San Joaquin Valley ozone study. The San Joaquin Valley ozone study was a landmark example of cooperative environmental management. he proven methods and teamwork established in the ozone study will provide a solid foundation for the PM_{10} program.

Approximately $11 million has been pledged to date. An additional $8.4 million is needed for FY 96-97. Table 2 illustrates previous funding commitments and highlights FY 96-97 funding requests. Table 3 depicts the overall funding strategy for the study.

Products

The study is intended to provide early products to support the development of an effective attainment plan for Central California. The information developed in the study will allow apportionment of high PM_{10} concentrations to contributing sources, thereby avoiding burdens on industry from unnecessary or ineffective control requirements. Implementation of the controls plans that result from study information will result in significant improvements in the health and well-being of the citizens of central California. Moreover, the methods and tools for monitoring, emission estimation, and modeling that are developed in the study can be used throughout the nation. The study will also provide valuable information on $PM_{2.5}$ to support new planning requirements that could result from EPA's potential PM_{10} standard revision.

Table 1

CALIFORNIA REGIONAL PM10 AIR QUALITY STUDY

ON-GOING PROJECTS

Title	Amount
PLANNING	
Development of Protocols for Emissions, Field Monitoring, Data Analysis and Modeling	$ 225,000
TECHNICAL SUPPORT STUDIES	
Determining Diurnal Variations and Optimal Averaging Times for PM_{10} Samples and Representativeness of Sampling and Spatial Scales of Source Influences During the 1995 Integrated Monitoring Study	$ 1,379,000
Characterizing Micrometeorological Phenomena During the 1995 Integrated Monitoring Study	$ 314,000
Characterization of Surface and Aloft Data for Winds and Temperature During the 1995 Integrated Monitoring Study	$ 389,000
Investigating the Dynamics and Chemistry of Fog Formation and Dissipation (In Support of Planning a Winter-like Field Program) During the 1995 Integrated Monitoring Study	$ 326,000
Identifying Rare Earth Isotopes and Single Particles in Dust as an Aid in Discriminating Between the Contributions of Fugitive Dust	$ 200,000
Feasibility of Using Rare Earth Isotope and Organic Tracers for Tracking the Fate of Primary and Secondary Aerosols from Combustion Sources	$ 30,000
Development of a Methodology for Estimating Emissions of NO_x and Ammonia from Soils	$ 300,000
Evaluation of Methods for Determining Ammonia Emissions from Selected Sources in the San Joaquin Valley	$ 250,000

Table 1 Continued

CALIFORNIA REGIONAL PM10 AIR QUALITY STUDY

ON-GOING PROJECTS

Title		Amount
MODELING		
PM_{10} Modeling: Evaluation, Modification, and Improvement of Existing Approaches, and Recommendation and Demonstration of a Modeling System for Application in SIPs	$	$200,000
DATA ANALYSIS		
Analysis of Existing Data for Technical Support Studies and to Aid Project Planning	$	380,000
EMISSIONS		
Improvements to the Emissions Modeling System	$	349,000
Development of Day Specific Emissions During the 1995 Integrated Monitoring Study	$	125,000
DEMONSTRATION STUDIES		
Control Method Demonstration Study: Almond, Fig, Walnut, and Cotton Harvesting Control Method Demonstration Study: Stabilization of Unpaved Agricultural Roads	$	509,000
Control Method Demonstration Study: Stabilization of Unpaved Public Roads Control Method Demonstration Study: Stabilization of Unpaved Shoulders of Paved Roads	$	402,000
Control Method Demonstration Study: Dairies, Feedlots, Poultry, and Dry Cereal Grains	$	414,000

Table 2

CALIFORNIA REGIONAL PM10 AIR QUALITY STUDY

SUMMARY OF CURRENT FUNDING NEEDS

FUNDING SOURCE	FY 92-93	FY 93-94
FEDERAL GOVERNMENT		
U.S. Department of Agriculture	$1,713,000	$1,907,000
Environmental Protection Agency	$4,000,000	$1,000,000
Department of Defense	$380,000	$250,000
Other Federal		$700,000
TOTAL	$6,093,000	[illegible]
STATE GOVERNMENT		
Air Resources Board	$3,000,000	$1,000,000
TOTAL	$3,000,000	[illegible]
LOCAL GOVERNMENT		
San Joaquin Valley Unified APCD	$1,525,000	$1,000,000
TOTAL	$1,525,000	[illegible]
PRIVATE INDUSTRY		
All Industry Sources	$705,000	$2,575,000
To Support Fundraising (in-kind)	$60,000	
TOTAL	$765,000	[illegible]

Table 3

CALIFORNIA REGIONAL PM10 AIR QUALITY STUDY

COMPREHENSIVE FUNDING STRATEGY

TOTAL CORE PROGRAM COST $24 MILLION

FUNDING SOURCE	FY 93/94	FY 94/95	FY 95/96	FY 96/97	FY 97/98	TOTAL
FEDERAL GOVERNMENT						
EPA	$2,400,000	$600,000	$1,000,000	$1,000,000	$400,000	$5,400,000
USDA	$449,000	$414,000	$400,000	$417,000	$290,000	$1,970,000
DOD		$130,000	$250,000	$250,000	$250,000	$880,000
OTHER FEDERAL				$700,000	$700,000	$1,395,000
TOTAL FEDERAL	$2849,000	$1,144,000	$1,650,000	$2,367,000	$1,640,000	$9,650,000
STATE GOVERNMENT						
ARB	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$5,000,000
TOTAL STATE	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$5,000,000
LOCAL GOVERNMENT						
SJVUAPCD		$525,000	$1,000,000	$1,000,000	$1,000,000	$3,525,000
OTHER LOCAL						
TOTAL LOCAL		$525,000	$1,000,000	$1,000,000	$1,000,000	$3,525,000
PRIVATE INDUSTRY						
ALL INDUSTRY SOURCES	$175,000	$460,000	$70,000	$2,575,000	$2,575,000	$5,855,000
TOTAL INDUSTRY	$175,000	$460,000	$70,000	$2,575,000	$2,575,000	$5,855,000
GRAND TOTAL	$4,024,000	$3,129,000	$3,720,000	$7,942,000	$7,215,000	$25,030,000
USDA SPECIAL AGRICULTURAL PROJECTS			$450,000	$1,490,000	$1,490,000	$3,430,000

Figure 1

CALIFORNIA REGIONAL PM10 AIR QUALITY STUDY

A community approach to regional air quality improvement

Mr. MCINTOSH. I appreciate you coming forward on that. I heard from several people earlier today about the problems of the PM 10 and it sounds to me like they are engaged in the study, but they want to get their regulations in place before it is there so they do not have to face the facts. We saw a history of that in the Clean Air Act where they ignored the major study that said we do not really have as much of a problem with acid rain as we thought, better pass the acid rain title before that study comes out so that we can go ahead and have the regulations in place. So I appreciate you bringing that forward to us.

I would be also interested, and may have the staff contact you afterwards, to find out more on some of those examples you pointed to, particularly the one about corking the cows. [Laughter.]

Sometimes you wonder whether these regulatory agencies want to defy the laws of nature in what they come up with. So we will be talking with you about that and I appreciate you coming forward on that testimony.

One thing is, have you heard any indication from the agencies of what they plan to do when the study is finalized? Have they made any commitments on how they would use it in their regulatory process?

Mr. CUNHA. Yes, their answer to me 2 weeks ago was we will use the old science and calculations and shut down the farming. They will literally shut down our farming in February. I mean that is what will happen if we have to do it.

Mr. MCINTOSH. Even if the new studies are available?

Mr. CUNHA. The new studies are in the process of coming out, we have 12 crops under research work. As those new crops come out with the control measures, if in fact they are PM 10, then we can take away those that are already on the book. Well, as you stated at the very beginning today, trust me, government is here, I am big government, I am here to help you, I am EPA, I am here to help you.

Well, there is not to my sense in the last 6 years that EPA has ever removed an old regulation with new science. The bureaucracy of the process takes forever. So we are fighting that. Yes, our air district is here today and they have mandates against them, but the agriculture industry is not going to cave in to this one, we are not going to shut down our farms because of science that is so bad. But they want us to use the old science so that they can have a regulation, and then as the new science continues along—we are to be done with the model in 1999.

Mr. MCINTOSH. OK. So that is the timeframe for it. Gary and I will talk about what might be done on that.

Mr. CONDIT. If I understand this correctly, EPA ignored the first or second study, or both?

Mr. CUNHA. Well, you know, which is great, Gary, the 1992 study that we get the 350,000 that you and Rick Leeman got——

Mr. CONDIT. Right.

Mr. CUNHA [continuing]. They sort of do not look at that as a good study, but yet it was the founding study that created the whole 23 million because we saw something of 7 million of that being ag. They are saying that your science is not coming out fast enough for the whole study, but for agriculture we have to work

on a year because we are looking at all the activities. They are saying well your science is not coming fast enough, we have got a mandate and I am sorry. That is what they said 2 weeks ago and when—I mean I am sitting there very nicely and calmly about this whole thing as I am going to tell all my farmers, you know, they have got to put a tank on the back of a disk. And the air district did agree though, the overhead that they put up there, these new crops that they picked out of a book—out of a book. They did not go to the farmers and ask them if a lettuce crop creates PM 10. And if any of you have done grain farming, they showed that we farm grain, cereal crops, seven times, we go over the same piece of ground seven times. That is a low-value crop, we do it once. We cultivate and plant at the same time. And how they calculate this? You till, that creates dust, you calculate the number of acres and now you have got something called PM 10 out of control.

Mr. CONDIT. So does that instigate a second study, is that what——

Mr. CUNHA. The second study is on, including those crops. Those studies will be on board for the dairies, the feed lots and the cotton. The almonds are ready now, starting to release data. Now we are going into the control measures, so in 1996 we will be looking at control measures for some of the almond operations. If in fact there are cotton problems or if in fact there are walnut problems, do you follow me? We do not know what the results are totally yet, we are getting them now. We are now starting to develop the control measures, but that is going to take a year to see if we can use these control measures and will they reduce it.

For your information, we are tied in with Sandia Labs, with that operation, we are using military research to help some of our activities.

Mr. MCINTOSH. But their basic statement at this point is where the new studies come on line, we will use them, but where there is no new study by next year, we intend to use the older studies, and not even the most recent one because——

Mr. CUNHA. You are exactly right.

Mr. MCINTOSH. That is something we can figure out. Thank you for bringing that forward, we will take some steps on that.

Ms. Richardson, I wanted to ask you about your Laotian farmer. Did he ever indicate to you, or anyone in his family, that he felt particularly badly treated because of his heritage or his national origin?

Ms. RICHARDSON. There is some of that feeling, but I have assured him that these agencies are equally arbitrary and outrageous with native-born citizens. [Laughter.]

Mr. MCINTOSH. They go after everyone with equal injustice.

Ms. RICHARDSON. But he has an elderly father who does not speak the language well and this man is terrified. That is why this member will not come forward with his name right now. But I understand you have concerns about the bona fides of the story, and I can give you the name and number of his consultant, who has been trying to help him through this process.

Mr. MCINTOSH. I appreciate that. I also understand the reluctance. And by the way, let me state for the record, the standing policy of our committee is to open an investigation whenever we

hear that an agency takes a retaliation against somebody who has participated in one of our hearings and provided information. So please, through Gary, let us know about that and we have in fact opened a couple of those studies where we have gotten indications that perhaps by coming forward they have become subject to even greater harassment from the agency.

Ms. RICHARDSON. In fact, we do have concerns about one such case. Fred and Nancy Cline, over in Sonoma County, testified last year on their wetlands problems with the Corps of Engineers and after that point, the Corps of Engineers, which had never been real friendly with them, decided that they would in fact stop negotiating and file a complaint against them and that complaint has now been filed. Now there is only circumstantial evidence to show that it was a retaliatory action, but the feeling of the Clines is that they are being retaliated against. And because of that fear, they had not gone public for several years while they tried to work through the process.

Mr. MCINTOSH. Let us know about the details of that, that would be helpful.

Thank you all. I have no further questions. Gary, do you have——

Mr. CONDIT. I might ask Roger and Carolyn both, I think that both Dave and I, both Democrats and Republicans, forward-looking Democrats and Republicans, agree that the key to resolving many of the problems that we face is for us to have a strong policy of economic development. And I guess I would just ask Roger and Carolyn both how we could achieve the goal of developing a strong economic development policy and at the same time balancing the environmental concerns that I know some of us have. So have you got any thoughts in those areas, either one of you?

Ms. RICHARDSON. I think we have tremendous innovative ability at the local level. Agriculture in the State is space age, we are way ahead of the rest of the world and way ahead of the rest of the country. We can solve problems if we are given clear problems backed up by scientific evidence and given some leeway to come up with our own solutions. And that is the core of our proposed ESA exemption, general permit for routine agricultural activities. We say give us the ability, we will make the commitment to come up with voluntary management practices that minimize, mitigate and avoid impacts to the extent possible. Understanding that we are here to produce food and fiber. Habitat is an incidental benefit that we can maximize, but we are here to produce food and fiber and when there are 60 million people in this State, as there will be by the low level projection in the next 50 years, we are going to need that food and fiber land.

Mr. CONDIT. Roger.

Mr. WOOD. I guess I would answer this in another area too. I know you talked about development and we are always trying to grow and everywhere you turn it is very difficult to grow here in California. And I think the real issue is that the problem with regulations is it is real easy to add regulations, because they always have a do-good goal about them. We talked about the Delaney Clause at lunch today. It was there, we do not want cancer in our food and all that sort of thing.

But yet when science says we can have a small residue of a chemical and not have cancer, any poor Congressman or elected person that goes out and votes to lighten up the rules or to make them comply with sound science but in effect you get painted up as lightening up the rules, all of a sudden you are an enemy of the environment, you are an enemy of the people, especially the people that do not have the slightest idea what pesticides are or how we use them. And I see that as a terrible challenge for us in the future, how to exist with that when it is so easy to put a regulation on because you always feel good when you are saving everybody, and it is so hard to try and make it comply with science because sound science is really boring and does not grab any sound bites or anything and all it does is get your opponent out there saying well you are in favor of poisoning all our babies. Boy, that is a tough one to get off your back when you are trying to run for re-election.

Mr. MCINTOSH. Yes. And one of the things that is very hard to show, and in part because it is incremental, is what are the costs of the alternatives. If you cannot use a particular pesticide and as a result you have either less safe or more expensive food because either you cannot use any substitute pesticide or the one you use is more expensive, then people are not going to be able to afford the product, they will eat less healthy diets and the consequences there are very important, but not as immediately apparent or scary to people as the threat of something that someone on television tells you might cause cancer, even though the scientists say it is perfectly safe in low levels.

So it is a very difficult, emotion-laden issue that we have to continually work against. I guess I end up concluding that if we educate people and continue to try to do that over and over again, although it may seem difficult and it might seem like you are butting your head up against the wall, that it is worth trying to continue to get that word out and educate people.

I had one real quick question for you, Mr. Wood. What happens if they plant the boysenberries, one row next to a row of blackberries and just did that in their fields and did not spray the boysenberries but they happened to spray the blackberries and it got over and took care of the boysenberries?

Mr. WOOD. I do not know. I think you would still have a problem because there is no tolerance allowed for the chemicals, that is one of the problems we have with drift and things like that where a neighbor sprays with one thing and it drifts over to his other neighbor's produce and you have to be very careful with those sorts of things. So you really could not do that.

I had one other comment——

Mr. MCINTOSH. Obviously a silly solution, but it seems like the government is making you go to that length.

Mr. WOOD. I had one other comment on your education thing. I think the challenge in education is that it is about 10 times easier to scare somebody than it is to educate them. And it is a lot easier to scare people about a whole lot of the issues we have talked about today, species dying or mountain lions dying here in California or fairy shrimp or salmon or owls or whatever, or the little kit fox. And it is so much easier to scare people about all those things

dying than it is to talk about that if you just keep doing this, food costs are going to go up. Right now, agriculture is maybe its own worst enemy, we produce so darn much that we hardly ever have shortages. But one of these days things will finally happen that way. I guess the only thing that I find consoling is that if the law is applied uniformly over the United States, California with its great environmental advantages that we have with our soil and our water and our climate, will probably be surviving even under the worst of times, but a whole bunch of other people that are in less productive areas because of the climate or whatever, are the ones that are going to suffer first. And those of us that really can apply high tech and last it out in the 21st century, we will still be around. But the cost of food will certainly not be like it is now and I do not think anyone ever appreciates the cost of food in the American diet versus the cost of food in Europe or other parts of the world.

Ms. RICHARDSON. An observation, that in the long-run we in agriculture are on the winning side, but if we get to that point, we will also be on the losing side. We will undoubtedly outlast this environmental extremism because what we do is vital to the human environment. The last gnat catcher will fall off its perch and die before the first mother starves in this country.

But what we would like to see is a better world for all of us. Beating the environmental drum is a multi-million dollar business right now. We have heavy investment out there in raising environmental extremist fears. We have to overcome that so that we can work toward solutions.

Mr. CUNHA. One last comment, in the 1996 farm bill, the 1997 farm bill that just went to the President I believe, in there there is an advisory task force now that will, under USDA, under the Natural Resource Conservation, will head up to look at all air quality regulation by EPA or other agencies and have the ability then to evaluate and respond to the Secretary directly, the USDA Secretary, so that we will have a watchdog now. And that has been signed into the—it is in the farm bill and we hope the President does sign the farm bill. But that is now I think the one step that us in the San Joaquin Valley, with Congressman Gary Condit's help and his staff and Congressman Dooley and Richard Pombo, we were able to get that through. And I want to thank those three gentlemen very much for their efforts on that. I think that is the right step, at least being able to watch things before they get out of hand.

Mr. MCINTOSH. Thank you all very much for coming, I appreciate your testimony. This has been enormously helpful to us.

We have one more panel, actually it is a panel of one, a government official. Ms. Pat Paul has agreed to come and testify about the influence of government regulations on local government in her experience as the head of the Board of Supervisors. Thank you for coming. Let me swear you in real quickly.

[Witness sworn.]

Mr. MCINTOSH. Thank you very much.

STATEMENT OF PAT PAUL, CHAIR, STANISLAUS COUNTY BOARD OF SUPERVISORS

Ms. PAUL. Thank you very much for this opportunity. I brought some support people with me in case you ask a technical question. I have Jeff Jue, head of our Welfare Department, with me today, and a caseworker, Jackie Davis.

Mr. MCINTOSH. Pat, excuse me just 1 second. What was the name again? Mr. Roland Brook, if you are here, your work was calling and said they needed you to call immediately.

Sorry.

Ms. PAUL. That is all right. I wanted to introduce Jeff Jue, head of our Welfare Department, and one of the casework management workers, Jackie Davis and then the head of our Mental Health Department, Dr. Larry Poaster, in case you have a technical question.

Thank you for this opportunity and I really appreciate you traveling to Stanislaus County and I am so pleased that you have a good working relationship with our Congressman, because as you know, he comes from local government and he is an excellent spokesperson for us.

Under the welfare, I gave you several situations and one says welfare rules discourage work and then I gave you a series of examples.

Another area I mentioned was that welfare rules discourage marriage. And I know all of us politicians always talk about family values and yet under some of the rules, marriage actually disadvantages some families.

Another area I mentioned, that welfare quality control programs do little to ensure correct grant amounts. We find that here we have both State and Federal bureaucracies overlooking each other and overlooking our programs.

Another area I mentioned was that welfare rules are inconsistent, and it seems to us that we have an incredible number of very complex, very conflicting rules and they seem to be ever-changing rules, which burden Stanislaus County.

Another area I mentioned was that the Federal Government mandates certain child protective services but does not participate in the cost of that. And Gary has certainly been a champion of unfunded mandates. And this one for us is very high; in fact, 60 percent of our cost.

And finally, under the welfare area, I mention that the court requires child welfare case management to regulate and have home visits, even when the child has been placed in a permanent situation with the relatives. So to us, this is unnecessary and in fact burdensome to us.

Under mental health, I had mentioned that Health Care Financing Administration discourages innovation at the local level and then I gave some examples, such as the Institute for Mental Disease exclusion; the Boren amendment and waivers process and then finally under this area, I had mentioned that public health requires and places unfunded mandates on the local government and does not require us to recover any costs. Sometimes the family is

very wealthy or they have insurance and we are not allowed to recoup those costs.

So those are some of my examples and if you have any questions, we will try to respond.

[The prepared statement of Ms. Paul follows:]

TESTIMONY AT THE HOUSE GOVERNMENT REFORM AND OVERSIGHT SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND REGULATORY AFFAIRS HEARING

SUBJECT: Overburdensome and Costly Federal Regulations Impacting Local Department of Health and Social Services.

SITUATION 1 - Welfare rules discourage work. An example is the TREATMENT OF BENEFITS TO DISABLED AFDC FAMILY MEMBERS.

A parent with a work history who becomes disabled is eligible to SSA benefits. The disabled parent is included in the AFDC budget and the SSA benefits ARE COUNTED in determining the amount of the AFDC grant.

A parent with NO work history who becomes disabled is eligible to SSI benefits. The disabled parent is NOT included in the AFDC budget and SSI benefits are NOT counted in determining the AFDC grant.

The family whose disabled parent DOES NOT HAVE a work history is advantaged since SSI benefits are not counted in determining the amount of the AFDC grant. This family receives a higher AFDC grant than the family whose disabled parent DOES have a work history.

SITUATION 2 - Welfare rules discourage marriage. An example are the MAN IN THE HOUSE RULES.

If a woman is married and living with the man who is the father of her children, his income counts against her welfare benefits.

If, on the other hand, the woman lives with a man who is not her husband or the father of her children, his income does not count at all against her welfare benefits.

If she marries the man, he is treated as a (step) father, and she loses all of her benefits. If she just lives with the man, she keeps all of her benefits.

SITUATION 3 - Welfare quality control programs do little to ensure correct grant amounts. Each level of government has a stake in issuing correct grant amounts. Yet, the feds operate large review programs in all states, trying to give a specific accuracy rating to each one. The state is therefor required to watch the counties, and counties are required to run quality control programs to defend against federal sanctions.

Federal sanctions have never been applied. Huge bureaucracies spend millions of dollars measuring questionable criteria and defending against imaginary sanctions. Money could be much better spent on programs to ensure greater accuracy.

SITUATION 4 - Welfare rules are inconsistent between various programs. AFDC, Food Stamps and Medi-Cal each determine neediness in different ways.

Three separate application forms are needed for these programs, asking many of the same questions. Because programs are run by different federal and state agencies, almost no sharing of forms is allowed.

A source of income may be considered in one program, but not another. Net income from earnings is figured differently in each. Property values are also calculated in different ways. The same vehicle will be given a different net worth, or may even be exempted, from one program to the other.

Each program also includes or excludes different household members in their various assistance units. The same individual may be included in the household Food Stamp case, have their own cash assistance case, and not be eligible for Medi-Cal at all.

The US Department of Agriculture, which administers the Food Stamp program has been talking of simplification for years. Yet, they have a simple requirement for any changes; they must not cost any more money, and they cannot disadvantage any client. In other words, change is desirable, but just not possible.

SITUATION 5 - The Federal Government mandates certain child protective services but does not participate in the cost of every child we serve.

Current regulations only allow states and counties to claim federal dollars for children who meet the AFDC eligibility criteria. The mandate at the federal level is to serve all children regardless of AFDC eligibility. Therefore, this constitutes an unfunded mandate. This should apply particularly in the cost of placement for all children in foster care.

SITUATION 6 - Current federal law requires Child Welfare case management services including regular home visits and six month court reviews in order to meet federal requirements for funding. Social Services should be able to eliminate child protective social worker and court involvement in all cases where a child is in a long term foster placement with a relative and still have the federal government participate in the foster care payment to that relative. This requirement is intrusive to family life and costly in terms of case management and the court system.

TESTIMONY AT THE HOUSE GOVERNMENT REFORM AND OVERSIGHT SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND REGULATORY AFFAIRS HEARING

SUBJECT: Health Care Financing Administration (HCFA) discourages innovations.

SITUATION 1: Institute for Mental Disease Exclusion

Acute psychiatric services not reimbursable under Medicaid if more than 51% of patients in a facility are mentally ill.

Serves Federal interest of long term care by reducing financial exposure, BUT

Increases cost for total government for short term acute psychiatric services by requiring affiliation with general medical care facility

Discourages innovation in programming

Programs driven by how revenue is targeted rather than what meets clients' needs

SITUATION 2: Boren Amendment does not allow local Managed Care Plans to promote cost effectiveness by relying on the market place and/or competition

Regulations require reimbursement of "reasonable costs" as defined in local environment

SITUATION 3: Process to gain HCFA waivers are archaic and slow

Difficulty in obtaining waivers, red tape, and bureaucracy make innovations difficult to obtain. This maintains the status quo.

TESTIMONY AT THE HOUSE GOVERNMENT REFORM AND OVERSIGHT SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND REGULATORY AFFAIRS HEARING

SUBJECT: Public law and regulations place unfunded mandates on local government while eliminating efforts to appropriately recover costs

SITUATION 1: Public law requires local governments to provide appropriate health and mental health services to meet the unique needs of children in order to ensure appropriate public education.

Such health and mental health services are the financial responsibility of local government

There is no means test so services must be provided free regardless of parents' economic status or the presence of insurance which would pay for services.

Mr. MCINTOSH. Great. Thank you very much for coming today and I want to commend you and the staff for the testimony. It is one of the most succinct, but clear examples of how regulations impact us in those areas; particularly, as you mentioned, the family values. We talk about that a lot when it comes to welfare reform, but nobody quite explains how it works. And you did it very well and in about three sentences. So I plan to borrow from that, if I may, from now on when I am talking to folks about it because I think it is a critical problems.

Let me ask you, in your experience here with the Board, have there been any examples where you have had to make decisions on how to spend local resources that were unwise or at least not fitting into the priorities that you think the citizens would want you to have, because of a Federal mandate or a Federal regulation that was particularly disturbing to you in your time there?

Ms. PAUL. I think that is true because at times it does not reflect maybe the values of our community. One actually that comes to mind immediately was a State one where we were to pay pregnant teen-agers to stay in school. Which, you know, is fine, I am glad they stay in school, but the other part was at the end after they had so many grades, we were to give them a certain amount of money. And I thought, they have probably made some poor decisions in their life already. To give them a cash allotment, I thought, no, they might go out and buy a leather skirt. Why do we not instead do some education but maybe money toward the children or toward books, not toward the cash which I thought was absurd. But maybe one of the people here has a comment.

Mr. MCINTOSH. Yes, please share with us anything that you have seen.

Mr. JUE. Just a very recent act which we find quite burdensome is in the category of unfunded public mandates, is the National Voter Registration Act, which requires a different level of activity for everyone walking into our offices, which requires an exchange of paper and time consumed for which there is no Federal compensation reimbursement. That is just a very recent issue we have been struggling with.

Mr. MCINTOSH. Well, I thank you very much, I appreciate this. Gary, did you have any questions or comments?

Mr. CONDIT. No, I just might get maybe a general feeling of what is happening with welfare reform. We have some very high-powered people sitting here at the table that I am well aware of their experience over the years. And let me also give kudos to the chairman of the Board, Pat Paul, for her work on behalf of the county and her service to the county, she does a great job for Stanislaus County and I am delighted that you are here today, Pat, and that you brought some experts with you.

I think you all have some idea of what we are trying to do in Congress in terms of entitlement reform, in terms of this so-called block grant back to the States, which will give decisionmaking, the theory is, closer to the people at home, so they can make decisions that hopefully are better.

I guess basically what I would like to get, maybe Pat or Jeff or Larry, whoever, a response just in theory, do you think that works? Does that help us with this burdensome regulations or mandates

or what-have-you? My suspicions are a little bit that, you know, as much as we can send back to the States, I believe in that, but I also think there may be some problems for counties if this is not—if there is not a good relationship or a good understanding with the State. So I would maybe like to get your reaction to that.

Ms. PAUL. From the political point of view, if you were at the State, as you always did battle for us, I think we would be in better shape, but sometimes common sense does not rule.

We really would like to have local control, but the fear is that we do not have the money that goes with that. And maybe Dr. Poaster or Jeff would like to say something.

Dr. POASTER. Just briefly, Congressman Condit. My primary area of interest is in the Medicaid arena and the Medicaid reform. We have some tremendous opportunities, all of which could solve several of the scenarios that Supervisor Paul submitted to you today.

I think that you are absolutely right in the sense that it is a very delicate issue. Much of the block granting that has been talked about in terms of Medicaid reform, given the current situation in California, and for example the per capita spending that goes to California as opposed to elsewhere in the country, and even more specifically the number of MediCal beneficiaries that reside in the San Joaquin Valley. Simply coming up with some quick and dirty capitation given to the States through a block grant, whatever, really could be harmful in terms of people who need health care services in this Valley.

So I think that what ultimately needs to happen is there needs to be some compromises in a variety of the areas that are being talked about right now. But clearly we have good ideas and, you know, as the safety net providers, as the providers of health care, I believe we know how we can do things that would be more cost-effective and that would provide a quality of service that would benefit the beneficiaries but which because of the absolutely unyielding presence of HCFA and their ability to look at innovation and do things differently, the promise of a lot of those changes is simply never realized.

So if nothing else is done, I think the concept of making it possible to have good ideas happen would be extremely beneficial at the local level.

Mr. CONDIT. So the concept of getting it back to local government as close as you can, is a good one as long as you just do not make it that simple. I mean there are some things that you need to do to ensure counties do not end up being the lowest level of the food chain.

Dr. POASTER. Absolutely.

Mr. JUE. If I might, I would like to first reinforce everything that Dr. Poaster said and thank you very much, Congressman Condit, for asking that question. I think we at the local level do have a lot of concerns.

In principle, the block grants and transferring responsibility, authority and policymaking to the lowest level possible makes sense. I think the problem will be, as we are testifying before you right now, once you pass the policy, the regulations and the regulatory machinery starts to unfold, and that is the awesome fear that we have in terms of how a lot of policies get interpreted into regulation

and at this point, whatever policy gets passed should be highlighted or prefaced with the demand for streamlining, simplification and consolidation, because that is essentially what we are asking for so that we have more creativity at the local level.

The last thing is in the implementation, what is not being discussed is the impact at the local level as some of these reforms unfold and people are kicked off of entitlements and lose access to services. At this point, it is the county safety net that will have the responsibility for backfilling or providing whatever essential services might be required, with little or no Federal or State support. I think that is the most ominous fear at the county level.

Mr. MCINTOSH. Let me mention, I think it will be important as we move the policy responsibility down to lower levels of government that we get rid of the bureaucracy in Washington. I mean, because bureaucracy abhors a policy vacuum and if they do not have anything to do and they are still there, they will start layering back all of the requirements and yet the financial responsibility would have been shifted down to you without the ability to make the decisions to make that work. So I think that has got to be a key measure of whether one of these block grant proposals is a good idea or not.

We could—at least I believe we could design good policy in Washington for a lot of these. The federalism notion says rather than me and Gary and the rest of us competing with other people for our vision of what is good, let us let each State do it because you could adjust to local circumstances. But the problem is if you end up doing that and keeping the Federal layer of bureaucracy, then you have got the worst of all worlds at that point.

Ms. PAUL. You do understand. Thank you.

Mr. MCINTOSH. Thank you, I appreciate it. We appreciate you coming.

We are going to now move to the phase, the open mic phase of the hearing. And let me invite everyone who would like to participate to come forward and just stand before the mic.

And I was just about to actually thank you, Joyce, for providing these apricots. Gary had mentioned the apricot lady, but he did not introduce me to you. So thank you.

Mr. CONDIT. She stepped out of the room.

VOICE. I see you are eating on our little snack.

Mr. MCINTOSH. I like them.

VOICE. They advertised in the New York Times a couple of weeks ago, the February 14 issue, and they had a 1,000 calls a day for 5 days after the ad.

Mr. MCINTOSH. That is great. I will confess to you I would have eaten more of the Jordan almonds except that I gave—the sweet almonds, except I gave up sweets for Lent, so I have to wait until after Easter for that.

VOICE. You can have prunes.

Mr. MCINTOSH. That is right. [Laughter.]

VOICE. Or blueberries.

Mr. MCINTOSH. Oh, those are not sweet?

VOICE. No.

Mr. MCINTOSH. OK, then I will take those.

VOICE. You can have pears.

Mr. MCINTOSH. I was nibbling on those. Thank you.

Mr. CONDIT. Mr. Chairman, I know you are going to take some testimony from the audience, but may I ask to include officially a couple of documents for the record? The study that was mentioned—am I allowed to——

Mr. MCINTOSH. Certainly.

Mr. CONDIT. It is a pretty thick study, that Mr. Nelson mentioned, 93640 at Risk, the study that you made reference to. And I have a letter from the California League of Food Processors that I would like to place in the record and testimony from Central Valley—the CVPIA letter. I would like to submit that for the record. And then I have an additional statement if I may, Mr. Chairman.

Mr. MCINTOSH. Yes, all of those will become part of the record for this hearing.

Sir, if you could go ahead and state your name and position for the record, then welcome to this hearing.

[Note.—The report entitled, "Farmers, Workers and Townspeople in an Era of Water Uncertainty," can be found in subcommittee files.]

[The information referred to follows:]

California League of Food Processors

April 1, 1996

Via Hand Delivery

Congressman Gary Condit
2444 Rayburn House Office Building
Washington, D.C. 20515

Public Hearing of the House Government Reform and
Oversight Subcommittee on National Economic Growth
Modesto, California

Dear Congressman Condit:

The California League of Food Processors aporeciates the opportunity to note several concerns related to the impact of the Federal Regulatory System on California's food processing industry.

1. U.S. EPA emission monitoring requirements on boilers installed since 1984 (CFR 60.49(b)(c) and 48(g)).

   These requirements are extremely costly. They simply are not necessary since California requirements exceed the Federal ones.

2. Title V Permits for Air Quality.

   These duplicate California's. A waste of resources.

3 Delaney Reform.

   The Delaney Clause of the Food, Drug and Cosmetic Act has been the subject of congressional attention.

   Resolution is needed and reasonable risk assessment/cost benefit analysis should be allowed to proceed.

   This issue also touches upon California's Safe Drinking Water Act (Prop 65) and the lack of uniformity between the federal and state governments of risk assessment/management.

CLFP would be pleased to provide additional and detailed information if such is desired.

Very truly yours,

E. D. Yates
Senior Vice President

cc: Rep. David McIntosh, Subcommittee Chairman
EDY.mm/ed/condit1.doc

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United States House of Representatives
Committee on Government Reform and Oversight

Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
The Honorable David McIntosh, Chairman

Statement of the Central Valley Project Water Association
1 April 1996
Modesto, California

Background

The federal Central Valley Project (CVP) serves agricultural, municipal and industrial water customers from Redding to Bakersfield. As such, the Project and its contractors have a responsibility to provide reliable and affordable water service to over 20,000 farms on three million acres of the nation's most productive farmland, and to two million households and industrial water users. Meeting these responsibilities is the most critical charge to the CVP's contractor/customers.

However, in addition to water service and flood control, the CVP (as a multi-purpose utility) is obligated to meet numerous federal environmental regulations emanating from the Central Valley Project Improvement Act (CVPIA), the federal Endangered Species Act (ESA), and the 1994 Bay/Delta Accord (Accord) which sets water quality standards under federal and state "Clean Water Act" mandates for the San Francisco Bay/Sacramento-San Joaquin River Delta.

By themselves, each of these three statutes places a heavy burden on the CVP's ability to meet its obligations to its customers to provide a cost-efficient and reliable source of water. Together and without studied, reasonable and coordinated execution, these laws have proven their potential to bring a devastating "legislative drought" to the Sacramento and San Joaquin Valleys -- California's heartland and key part of the nation's foodbasket. To illustrate the effects of significant and sustained water shortage to agriculture-based rural economies, I have attached a California Institute for Rural Studies report, *93640 at Risk: Farmers, Workers and Townspeople in an Era of Water Uncertainty.*

Questions of Policy and Process

At present, CVP agricultural customers in the San Joaquin Valley are facing a 20% supply shortage due to ESA, CVPIA and Bay/Delta Accord obligations. This is occurring despite 1996 being the second of two of the wettest years in a decade, and with the Shasta reservoir projected to carry more than half of its total capacity over into the next water year. To wit, implementation of environmental regulations is causing federal agency regulators and decisionmakers to hold back from deliveries a significant portion of the CVP system's water. A question yet unanswered, and I believe the one being asked by this Subcommittee, is, "can these federal regulations be implemented without, or with less of, an adverse impact on the regulated community?"

Unfortunately, the adverse impact of these federal actions has occurred despite the obvious social and economic costs of water shortages. In fact, there is little or no justification offered by the regulatory agencies by way of cost/benefit studies that indicates any attempt to consider these costs in the decisionmaking process. (Certainly, the "science" behind these decisions is the focus of significant debate as well).

Significantly, this key information is lacking despite President Clinton's Executive Orders 12866 and 12875 directing federal agencies to undertake exactly this type of analysis and to broaden the scope of the decisionmaking process to include consultation with affected local governments before engaging in significant regulatory action, and repeated requests by affected parties that this type of analysis be undertaken.

While some federal actions such as those directed by the ESA fall beyond the legal purview of these Executive Orders, there is no reason why the spirit of these "Regulatory Reinvention Initiatives" cannot be adhered to in even these cases. Would it not be beneficial to decisionmakers to know the potential costs of their proposed regulatory mandates? Would it not be practical to have the input and participation of local governments in developing the most effective and efficient means of executing a particular federal action?

There are of course, other federal regulations having an adverse impact on California's Central Valley that do not have the ESA's statutorily defined narrow focus and scope of impact analysis.

The 1994 Bay/Delta Accord

In many ways, the Bay/Delta Accord is a positive example of such interaction between federal (and state) agencies, affected local governments and public stakeholders. While not perfect and far from complete in its implementation, the Accord and the resulting CALFED (state and federal agency officials working together to coordinate implementation of state and federal legal obligations) may be pointing the way towards a more balanced and studied approach to regulation. Unfortunately, recent federal agency actions under the CVPIA to further reallocate water from human to environmental uses have served to contradict the principles of the Accord and place the historic agreement and its fundamental bases in jeopardy.

Please see the attached letters from our Association to the USBR and U.S. Fish and Wildlife Service in this regard.

The CVPIA

In contrast to the manner in which agreement was reached on the Accord and the principles under which it is supposed to operate, is the federal agency implementation of the CVPIA. Without the benefit of legislative report language or statutory interpretation through a formal rulemaking process, the CVPIA is being implemented through a mixture of draft "interim guidelines" and "policy directives". Our Association, its individual members, and other affected parties have commented extensively throughout the ongoing implementation process of the last three and one-half years with regard to both the technical and policy aspects of particular CVPIA provisions, and have repeatedly indicated the need for a balanced approach that includes assessing and

social and economic issues. This input however, all too often does not appear to be in the federal agencies' decisionmaking process.

ple, the legislative history leading to the CVPIA water conservation provisions strates Congress' intent that: 1) The Secretary be required to establish criteria and anisms for evaluating contractors' water conservation plans within a time certain; 2) The retary be required to conduct such evaluation; and, 3) The Secretary be authorized to assist ially in the implementation of conservation programs and measures.

wever, instead of focusing on defining the Department of the Interior's responsibilities and gations to seek and evaluate potential increases in efficiency and to assist in implementation ere applicable as the law requires, the USBR water conservation policy and program makes an licit assumption that CVP contractors waste water and shifts a heavy burden upon contractors prove, for all intents and purposes, that they are not wasting water.

r from encouraging and assisting to increase water management efficiency (many CVP water tricts have demonstrated use efficiencies in excess of theoretical optimums), USBR/CVPIA ater conservation policies and programs hinder progress in water management by forcing water tricts and contractors to expend significant amounts of time and financial resources towards proving the USBR's negative assumptions about CVP contractor water management and USBR's "cookie-cutter", "one-size-fits-all" approach to water conservation planning.

see the attached letter from consulting engineer Dennis Keller to the USBR with regard ongoing "Garamendi Process" of seeking administrative solutions to CVPIA issues related conservation.

CVPIA water transfer provisions were touted to promote and increase opportunities and enhance water management efficiency. Again, however, the USBR in this regard have only hindered water transfer opportunities and practices.

of the CVPIA, the USBR has significantly disrupted the CVP water of water management transfer/exchange/banking. These short-term, ve long been used by water district customers to take advantage of urpluses to mitigate unmet water demands. Prior to the CVPIA, ces were accomplished within hours or days through open ffice officials. Since the CVPIA was enacted however, USBR inated such opportunities through executive fiat or has over so many months that the transfer opportunity has

Water District to the USBR with regard to a district to another.

Mr. Chairman, these comments are intended to illustrate a few key examples of conflicts between federal agency regulators and the regulated community that have occurred in since enactment of the CVPIA in 1992. All too often, it is painfully obvious that these conflicts would be minimized or would not occur at all, were it not for excesses of discretion by federal agency staff and policymakers. While we strongly support flexibility in the interpretation and implementation of law to account for balancing of various needs and interests, we equally strongly believe that the federal agencies have an obligation to interpret and execute laws such as the CVPIA in a manner that is demonstrably reasonable, efficient and justifiable. This, the agencies have yet to accomplish.

Despite numerous attempts at finding "administrative" solutions to the many regulatory issues adversely impacting the CVP community, there has been little progress or mitigation. Consequently, we have taken a position in strong support of efforts to amend the CVPIA through legislation (HR2738) -- "reforming" the CVPIA and establishing clearer and more workable statutory parameters for the federal regulating agencies to follow.

We would like to thank the Committee for holding this hearing and providing the opportunity for us to illuminate a few of the many regulatory and implementation problems faced by the customers of the federal Central Valley Project.

STATEMENT OF E.D. YATES, SENIOR VICE PRESIDENT, CALIFORNIA LEAGUE OF FOOD PROCESSORS

Mr. YATES. Thank you, Chairman McIntosh, Congressman Condit, I am Ed Yates with the California League of Food Processors.

You just mentioned the material we put in. There is one part of it I thought was worthy of noting. I know the hour is late, but the Federal Government has imposed a requirement called Continuous Emissions Monitoring on food processors' boilers that have been put in since 1984. Now California's program has standards that are three times more strict than the Feds', yet the Feds are requiring these folks who only operate that boiler about 10 or 12 percent of the time, to put on this continuous emissions monitoring equipment to the tune of $100,000 to $150,000 per stack, to make sure that they are in compliance with a Federal standard that is three times more liberal than the State standard that they already have to meet. We do not think that that is quite right and there ought to be some ways that we can overcome that arbitrary, in my opinion, requirement.

We have very strict and very good air regulatory programs in California and all of the processors do all they can to be good citizens and put in the control equipment needed.

And with that, I know time is late—we certainly would like your help in solving this problem because it exists right now.

Mr. CONDIT. May I ask a question? You said the State of California exceeds the Federal standard?

Mr. YATES. It is three times more strict.

Mr. CONDIT. Happens in California a lot, does it not?

Mr. YATES. Yes. Thank you.

Mr. MCINTOSH. Maybe we can even get Henry on board for this correction, Gary.

Mr. YATES. Thank you.

STATEMENT OF BOB STANFIELD, GENERAL MANAGER AND CHIEF ENGINEER, MADERA IRRIGATION DISTRICT

Mr. STANFIELD. Thank you. Congressman McIntosh and Condit, I am Bob Stanfield, the general manager and chief engineer for the Madera Irrigation District.

Our District is located about 50 miles south of here and encompasses about 130,000 acres predominantly of permanent crop plantings. We had a commodity value last year of around $300 million that came out of our district. Less than 5 percent of our cropping patterns are of the so-called surplus commodity crops.

I would like to share with you, as others have this afternoon, an experience we have just gone through and the need and why I am here to encourage your support of H.R. 2738, that is the CVPIA Reform Act.

The Deputy Secretary of Interior, Garamendi, has continued to try to reassure us that there is no need for this reform legislation, that the CVPIA itself will facilitate the concerns of the Federal contractors.

Generally speaking, prior to the CVPIA, in a transfer of water, historically we are able to do it in less than a week. We started a transfer of project water out of Friant in October of last year.

After almost 5 months, that transfer was never completed because of the obstacles put up by U.S. Fish and Wildlife Service. The cost of not being able to complete that transfer from my district to a groundwater deficient area near Bakersfield was $700,000 to my district. Incidentally, about $200,000 was the cost to the U.S. coffers.

Now, we are not quibbling with the fact that there was a need for environmental legislation reform. Prior to 1992, an average water year cost in our district was less than half a million dollars. With the new legislation, new contracts, it is $6 million, 12-fold increase. If you can maybe compare that to a bottle of Chevas Regal. You go down to Lucky's and you buy it for $19, now you have got to pay $240 for the same bottle. That gives you a comparison.

Another comparison would be in the transfers which Secretary Garamendi has continued to reassure us will be rapidly taken care of, when you compare 3 days to do a transfer before CVPIA and almost 5 months after CVPIA that is like the warp speed of an elephant's gestation period.

Thank you very much for the opportunity to share this experience with you today.

Mr. MCINTOSH. I appreciate that. I had not heard of that legislation, so I appreciate you mentioning that.

Would anyone else like to testify today in the open mic period?

STATEMENT OF AL BRIZARD, FARMER

Mr. BRIZARD. Congressman Condit, my name is Al Brizard, I am a small farmer on the west side over in Patterson.

I only have a comment to make, I guess it is a favorite horse that I beat to death, but I think that almost all the testimony that you heard today and that which we read about in the paper all the time of all the horrors of some of these things, revolve around a system which I call the best caste system in the world in this country, and that is our bureaucracy. And that is where the problem is because they are almost untouchable, as are castes in other countries.

And they are totally supported by our tax dollars and fees and yet they are largely unregulated, they do all the regulating, and yet they are unregulated.

There are several things I suppose that could be done, but one of the things I think that the Congress needs to look at and our own State legislature needs to look at is to make the funding for all of these regulatory agencies come out of the general budget. Do not have them support themselves on their own fees and assessments and fines, make everything subject to the general budget.

And that is all that I really have. Just a comment. Thank you.

Mr. MCINTOSH. Thank you, I appreciate it.

The other idea that I have been thinking about is to make their pay raises conditional upon a performance review from the people they work with. If you had that kind of customer satisfaction measure that could go into it, I think you would have a much more responsive bureaucracy implementing a lot of these regulations.

I do not want to cut anybody off. Is there anybody else who wanted to say anything to us today?

[No response.]

Mr. McINTOSH. If not, I think we will bring this hearing to a close. Let me say thank you again to all the people who testified, thank you, Gary, for your great help and to your staff. They are extremely competent and helpful to us in the way that we put together this hearing.

With that, this hearing of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs is now adjourned.

[Whereupon, at 3:51 p.m., the subcommittee was adjourned.]

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